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6 IN RE: USA v. CHARLES BRENT JUSTICE

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9 TRANSCRIPTION OF AUDIO PROCEEDINGS

10

11 March 19, 2020

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15 TRANSCRIBED BY:

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1 A P P E A R A N C E S

2 For the Government:

3 MR. JOHN STANFORD

4 For the Defendant:

5 MR. ROBERT GORENCE

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8 Q.  
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1                   COURT CLERK: United States of America  
2 versus Charles Brent Justice.

3                   MR. STANFORD: John Stanford for the  
4 government, Your Honor.

5                   MR. GORENCE: Good morning, Your Honor,  
6 Robert Gorence on behalf of Mr. Justice, and he is  
7 seated at counsel table.

8                   THE COURT: Good morning. Good morning, Mr.  
9 Justice.

10                  THE DEFENDANT: Good morning.

11                  THE COURT: All right. Is the government  
12 ready to proceed?

13                  MR. STANFORD: We are, Your Honor.

14                  THE COURT: You may call your witness.

15                  MR. STANFORD: We call Nate Kempton to the  
16 stand. Your Honor, would you like me to stand at  
17 the podium or speak from here?

18                  THE COURT: It's up to you. You can go to  
19 the podium if you want, but you can stay there if  
20 you wish. Whatever you prefer.

21                  MR. STANFORD: Just out of habit, I think  
22 I'd like to go to the podium.

23                  (Nate Kempton was placed under oath.)

24                  COURT CLERK: Go ahead and have a seat. If  
25 you could state and spell your last name for the

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1 record, please.

2 THE WITNESS: Nathan Kempton, last name  
3 K-E-M-P-T-O-N.

4 DIRECT EXAMINATION BY MR. STANFORD

5 Q. Mr. Kempton, what do you do for a living?

6 A. I am employed by the Bureau of Alcohol,  
7 Tobacco, Firearms & Explosives as a special agent.

8 Q. And how long have you done that?

9 A. Since November of 2016.

10 Q. What did you do prior to that position?

11 A. Prior to that, I was a police officer for  
12 the Farmington Police Department since 2005.

13 Q. How did you get involved with this case?

14 A. I was contacted by Air Force OSI, Office of  
15 Special Investigations.

16 Q. Okay. What did they tell you?

17 A. So they explained that they had an  
18 individual on the base who had purchased a silencer  
19 through an online website.

20 Q. Okay. Why would the ATF be interested in  
21 somebody purchasing a silencer?

22 A. So, at the ATF, you know, we investigate  
23 violations of federal firearms laws, explosives  
24 laws and arson and a little bit of tobacco and  
25 alcohol, but in this case it was due to the fact

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1 that it was an NFA weapon, a silencer.

2 Q. What is NFA?

3 A. I'm sorry, it's the National Firearms Act  
4 from 1934. It's been around for quite a while.

5 Q. Is a silencer by itself illegal?

6 A. It is.

7 Q. And why are they illegal?

8 A. A silencer is -- under the NFA, National  
9 Firearms Act, it is deemed a firearm, and its sole  
10 purpose is to suppress the sound of gunfire from a  
11 firearm to allow someone to shoot someone  
12 undetected.

13 Q. Okay. And you say you got information from  
14 OSI that Mr. Justice ordered that item?

15 A. Yes.

16 Q. Was there anything else he ordered?

17 A. Yeah. According to their other shipping  
18 labels, they determined that he had also purchased  
19 a Glock-pistol-compatible with auto sears that are  
20 designed to attach to the back plate of a Glock  
21 pistol and allow that firearm to function fully  
22 automatic.

23 Q. Okay. And was there also something called a  
24 butt stock?

25 A. Yep. Yes, the butt stock, in this case he

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1 also had ordered a butt stock that's compatible to  
2 a Glock pistol, and it changes -- essentially  
3 changes the definition of the pistol to a rifle  
4 once you attach it making it a short-barreled rifle  
5 as opposed to a pistol.

6 Q. And with the sear kit, you mentioned that  
7 would turn it into a machine gun rifle. Is that  
8 correct?

9 A. Yes.

10 Q. What's the purpose of converting a normal  
11 gun like that to a machine gun with a butt stock?

12 A. The combination of all of them, it's common  
13 that people who buy the auto sears will also use  
14 the butt stock to attach to the Glock. It allows  
15 the shooter to control the weapon easier.

16 Q. Okay. And were you -- did you participate  
17 in any of the investigation with OSI?

18 A. Yes.

19 Q. What -- what did you do?

20 A. I primarily helped them identify the  
21 silencers. The silencers, they determine that  
22 there were baffles inside the silencer which  
23 actually allows it to suppress the sound. A lot of  
24 times people will -- individuals will order  
25 screw-on tips that resemble a silencer, but they're

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1 not. They'll have a smooth internal board as  
2 opposed to the baffles inside that actually make it  
3 a silencer.

4 Q. Did you examine the item in this case?

5 A. Yes.

6 Q. And?

7 A. And just from my determination they were  
8 silencers. One of them, in fact, was -- they call  
9 them -- online, as a disguise, they call it an  
10 inline fuel filter, which disguises the product  
11 when, in fact, it's designed to be a silencer. And  
12 ATF has deemed that product specifically as a  
13 silencer.

14 Q. So you're familiar with that product?

15 A. Yes.

16 Q. And did the ATF train you in examining and  
17 recognizing silencers and distinguishing them from  
18 similar but not quite the same parts?

19 A. Yes.

20 Q. And did you put that training to use when  
21 you determined that the items in this case were, in  
22 fact, silencers?

23 A. Yes.

24 Q. Okay. And did you review the materials that  
25 OSI extracted from the defendant's cell phone as

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1 part of their search and seizure?

2 A. Yes.

3 Q. Did any of those materials concern you?

4 A. Yes. So, on the cell phone photographs that  
5 I viewed, there were multiple photographs of  
6 silencers, machine gun conversion schematics on how  
7 to mill out the receiver and to insert an auto sear  
8 to allow it to function as a machine gun.

9 In addition to that, there were recipes for  
10 explosives. One of them in particular was -- that  
11 I was familiar with was an HMPB, and that's an  
12 acronym for something else that I won't attempt to  
13 pronounce right now, but essentially what that  
14 consists of is just household products like  
15 hydrogen peroxide, Ximine and citric acid. So  
16 there was recipes on the percentages of each of  
17 those on what it would take to make that explosive.

18 In addition to that, there was -- and these  
19 appear to be Instagram photos. One of them was  
20 Molotov cocktail, on how to best construct a  
21 Molotov cocktail bomb. There was another one that  
22 I recall of -- that showed the mixture of ammonium  
23 nitrate with nitromethane and aluminum powder in  
24 order to make an explosive. And so those were a  
25 few of the things that I saw along with

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1 anti-government geared posts along with some that  
2 were mocking Blacks, African Americans. I saw one  
3 depicting that. Anti-law enforcement.

4 Q. The items you reviewed that referenced  
5 explosives, were those instructional in nature?

6 A. Yes.

7 Q. It was how to do it?

8 A. Yes.

9 Q. Not the fact of, but how. Okay. Did you  
10 also review the results of the search warrant at  
11 defendant's home?

12 A. Yes.

13 Q. Did the items found there concern you?

14 A. Yes, at the residence there was --

15 MR. GORENCE: Your Honor, I'm just going to  
16 object. I don't think concern, that that  
17 (inaudible) format. If there's something more  
18 specific, but concern me, I'm going to object to  
19 that question. It's irrelevant. If there's some  
20 factual statement, I'm all for it. But concern is  
21 not a factor in (inaudible).

22 MR. STANFORD: And you understand the  
23 question I'm asking, Your Honor. I will rephrase  
24 it if that makes it fit better.

25 THE COURT: All right. Why don't you

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1 rephrase.

2 Q. Agent Kempton, as part of your training in  
3 the ATF, did you receive instruction on how to  
4 perceive potential threats to public safety?

5 A. Yes.

6 Q. And part of that training, did it involve  
7 certain common markers that people who are threats  
8 to public safety share in common?

9 A. Yes.

10 Q. And when you reviewed the results of the  
11 search warrant at defendant's home, did any of the  
12 items match things that you were trying to look for  
13 in evaluating whether someone is a threat to public  
14 safety?

15 A. Yes.

16 Q. Can you describe those things, please?

17 A. So, in the residence, they found -- OSI  
18 found items that matched some of the items on the  
19 phone, particularly the silencers and the butt  
20 stock.

21 Q. And -- and did they also find weapons there?

22 A. Yeah. They found I believe it was 17  
23 firearms and lots of ammunition.

24 Q. Do you recall how much ammunition there was?

25 A. There were thousands of rounds.

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1       Q. And I'm going to use the term concern for  
 2 shorthand, but when I say concern I'm describing  
 3 the training you received on recognizing things  
 4 that give rise to red flags as an agent that  
 5 someone might be a threat to public safety.

6 Understood?

7       A. Yes.

8       Q. Did the stockpile of weapons and ammunition  
 9 cause you professional concern?

10      A. So, in this situation, I looked at the  
 11 totality of everything. So we had the weapons. We  
 12 had the ammunition, but what concerned me the most  
 13 were the things on the phone, the photographs. So  
 14 if you encompass everything together, there was --  
 15 there was, indeed, a concern. I think the things  
 16 that were located on the phone were things that are  
 17 not common. We don't run into that every day.

18      I mean, we investigate a lot of cases  
 19 involving firearms and even explosives, but with  
 20 the content on the phone, that was something that  
 21 was abnormal and not something we run into a lot.  
 22 I think the last time I saw things like that was a  
 23 couple of years back. There was a school shooting  
 24 in Aztec where there was an active shooter in the  
 25 school. A couple of students were killed. Some of

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1 the things found on that individual's thumb drives  
 2 were similar, especially involving in Mr. Justice's  
 3 phone he had pictures of Christchurch, New Zealand,  
 4 massacre, quite a bit of stuff involving that, and  
 5 that was something similar to what I saw in Aztec,  
 6 you know. So that was the most concerning thing,  
 7 was when you just put it all together.

8 Q. I believe your criminal complaint references  
 9 there was the manifesto, in fact, from the shooter  
 10 in the New Zealand incident. Is that correct?

11 A. Yes.

12 Q. Did you skim through that?

13 A. I saw that it was on there, yes.

14 Q. Did the items -- did the saved files to his  
 15 phone give you an impression as to whether he might  
 16 be planning something in your professional  
 17 experience?

18 A. So and that is something that was definitely  
 19 a concern after looking at the phone.

20 Q. And then he, in fact, ordered some of the  
 21 things listed on his phone illegally, correct?

22 A. Yes.

23 Q. Have you received training in recognizing  
 24 active shooter behaviors?

25 A. Yes.

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1 Q. Through ATF?

2 A. Yes.

3 Q. Do any of defendant's behaviors match what  
4 you've been trained to look for in potential active  
5 shooters?

6 A. So, in this case, I would call it a red flag  
7 and something to take into account if you -- with  
8 all the circumstances in this case, it was a red  
9 flag to me that that's a potential threat.

10 Q. Have you dealt with other individuals who  
11 illegally possess firearms and silencers?

12 A. Yes.

13 Q. Have you arrested them and believed that  
14 they should be detained prior to trial?

15 MR. GORENCE: Your Honor, that's actually  
16 irrelevant. I mean, he can testify to the facts.  
17 I think it's your opinion as to whether it  
18 constitutes a violation, so I'm going to object to  
19 that as irrelevant.

20 THE COURT: What are you trying to get at?

21 MR. STANFORD: Well, I think it's worth  
22 noting whether he has in the past recommended  
23 people arrested with similar offenses to be  
24 detained before trial, and if there is a reason why  
25 he feels more adamant that Mr. Justice should be

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1 detained based upon contacts with prior people, I  
 2 think it makes sense to understand why he believes  
 3 Mr. Justice is different from the average person  
 4 arrested with these types of items.

5 THE COURT: I think he's already established  
 6 that through his testimony, but --

7 MR. GORENCE: My understanding is that  
 8 that's -- (inaudible), that's the sole  
 9 responsibility of the Department of Justice. At  
 10 least when I was there, agents are supposed to be  
 11 neutral investigators. That situation came up with  
 12 FBI Director Comey criticized when the attorney  
 13 general had accused and he made a prosecutorial  
 14 decision which has been condemned now by the  
 15 inspector general. I believe it's solely the  
 16 function of the Department of Justice, not  
 17 supposedly neutral investigators. So that's one  
 18 objection.

19 And it's really a fundamental point of  
 20 American law enforcement now that (inaudible)  
 21 encroach in a different way in this case.

22 THE COURT: So I'm going to sustain the  
 23 objection. I think I know where you're trying to  
 24 head with this. He's talked about red flags. If  
 25 you have a question for him whether, in similar

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1       circumstances where he's found silencers or the --  
 2       what is that, the stock kit, whether he's found  
 3       similar red flags -- I mean, if that's what you're  
 4       trying to get to, how often you find this  
 5       combination of circumstances, possibly I would  
 6       allow you to get into that subject to Mr. Gorence's  
 7       objections, but the objection is sustained with  
 8       regard to that question.

9                    MR. STANFORD: That's fine. That is where I  
 10      was going with this, is whether this case is  
 11      distinguishable based on his experience from other  
 12      investigations of similar offenses. But I think  
 13      he's probably established that. We certainly don't  
 14      need to invoke the president and the attorney  
 15      general and James Comey to get there. I'm happy to  
 16      close it at this point.

17                    MR. GORENCE: I will say for the record that  
 18      I think it is absolutely analogous, and I am going  
 19      to put it on the record.

20                    THE COURT: Well, it's already on the  
 21      record, but my ruling was not based on that record,  
 22      so --

23                    MR. STANFORD: That's fine. I'm done.

24                    THE COURT: Okay.

25                    CROSS-EXAMINATION BY MR. GORENCE

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1       Q. Agent Kempton, you indicated you  
 2 participated in the OSI investigation. Was that  
 3 from the beginning of when OSI commenced their  
 4 investigation?

5       A. I think they began this investigation  
 6 through -- they received information from Homeland  
 7 Security first, and then I got involved when they  
 8 discovered he had silencers and they called me to  
 9 help them identify the silencer.

10      Q. Okay.

11      A. That's where I began my involvement.

12      Q. When was that?

13      A. It was -- oh, man, I don't have an exact  
 14 date, but it was sometime in February.

15      Q. Okay. I take it you understood that Mr.  
 16 Justice was arrested by OSI law enforcement on the  
 17 base on February 19th of this year?

18      A. Yes.

19      Q. Were you already involved in the  
 20 investigation at that point?

21      A. Just over the phone about the silencer, yes.

22      Q. There was a motion to detain Mr. Justice  
 23 pending that Article 31, the Uniform Code of  
 24 Military Justice, that was held on base on February  
 25 25th of this year. Do you recall that?

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1       A. I learned of that after -- after the fact,  
2 yes.

3       Q. Okay. Well, that's fine. Did you  
4 participate in that hearing on the base? It took  
5 the better part of the day.

6       A. I did not, no.

7       Q. Have you reviewed -- I don't think there's a  
8 transcript, at least that I can determine, yet, but  
9 there is detailed -- I'll call it a synopsis of the  
10 hearing. Have you reviewed that?

11      A. I have not.

12      Q. Your, I'm going to call him colleague, in  
13 this investigation, the OS -- Office of Special  
14 Investigations from the Air Force. His name is  
15 Sorenson. Did you work with Mr. Sorenson?

16      A. Yes.

17      Q. He testified in that hearing. Have you seen  
18 what he testified in that hearing about?

19      A. I have not yet.

20      Q. Do you understand that hearing was whether  
21 or not Mr. Justice would stay in military  
22 confinement because he was at Cannon Air Force Base  
23 for six days in detention? Do you know that that  
24 hearing occurred on the base?

25      A. I wasn't aware.

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1       Q. Okay. Well, there's documents in these  
 2 pleadings having to do with that hearing, part of  
 3 which I supplied to the government, part of which I  
 4 think is a tab for the Court. Have you reviewed  
 5 the findings that there was -- let me get -- this  
 6 was assigned to Colonel David A. Carlson of the  
 7 377th and we'll get into that. Have you reviewed  
 8 Colonel Carlson's findings?

9       A. I did not. The documents I reviewed were  
 10 affidavits in support of the charges that the  
 11 agents had written, and that was it as far as  
 12 documents.

13       Q. Well, are you aware that on the same  
 14 criterion that this Court has to determine; i.e.,  
 15 is someone a danger to themselves or to the  
 16 community, that's one, and number two, is someone a  
 17 flight risk, are you aware that that is, in  
 18 essence, what the hearing on the 15th was all about  
 19 before Colonel Carlson?

20       A. I am now that you're telling me about it,  
 21 but before that I wasn't familiar with that  
 22 hearing.

23       Q. Well, I'm not saying familiar. I take it  
 24 you knew that Colonel Carlson found that Airman  
 25 Justice was not a danger to himself or the

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1 community or a flight risk and released him on the  
 2 25th?

3 A. So I became aware that he was released on a  
 4 Sunday night. It was -- so it would be the 15th.  
 5 That's when I first knew that he was released from  
 6 custody.

7 Q. Okay. And I take it you can tell the Court  
 8 that from February 25th -- well, whatever date he  
 9 was released from Cannon Air Force Base -- until  
 10 the time he was arrested, which I take it would  
 11 have been this past Monday, correct?

12 A. Correct.

13 Q. -- you can tell the Court that he abided by  
 14 all the conditions imposed by Colonel Carlson? He  
 15 didn't violate the law nor did he attempt to flee  
 16 in the slightest. You can tell that to --

17 A. As far as I know. I don't know.

18 Q. Well, you're the case agent. I take it  
 19 you'd look at --

20 MR. STANFORD: It calls for speculation,  
 21 Your Honor. And, also, I'm not sure how his prior  
 22 proceeding that was entirely under Air Force  
 23 jurisdiction and before Mr. Kempton got the case is  
 24 relevant to his testimony. He's testified that he  
 25 made his determination based on his own assessment,

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1 not based on anything the Air Force did.

2 THE COURT: Well, the government attached  
 3 part of that to its motion, and so Mr. Gorence is  
 4 entitled to inquire what the witness knows or  
 5 doesn't know about it. But I think he's  
 6 established that he knows very little about it.

7 MR. STANFORD: Exactly. I'm saying  
 8 attaching that to my motion doesn't imbue this  
 9 agent with knowledge of that proceeding. I think  
 10 he's already stated he wasn't involved and doesn't  
 11 know anything about it.

12 MR. GORENCE: Well, Your Honor, the whole  
 13 point is the full picture, and one would expect the  
 14 case agent to be the repository of all of the  
 15 information he gathered. And if he doesn't know  
 16 it, it's fine. What I think he would know is that  
 17 since he was involved -- I'm asking the most  
 18 pertinent question, and again, the Court can take  
 19 judicial notice, as you can see, he was released  
 20 under a comparable standard by a full colonel. But  
 21 I don't --

22 MR. STANFORD: It is not (inaudible), Judge.

23 MR. GORENCE: If you want to interrupt me,  
 24 just tell me when you want me to stop. But the  
 25 point is that what is totally relevant is, once

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1 he's been released, is how he's done since then.  
 2 And obviously -- I mean, again, if there was any  
 3 attempt to flee, obtain weapons, that would be  
 4 highly significant, I would think, in the Court's  
 5 determination. That's really my only question to  
 6 him now, is that has there been any indication of  
 7 Mr. Justice -- since the day he was released  
 8 following that hearing the 25th to when you  
 9 arrested him on Monday, has he -- has there been  
 10 any attempt whatsoever to obtain weapons,  
 11 ammunition, explosives or flee in any way?

12 THE COURT: You can answer that to the  
 13 extent you know it, the answer.

14 THE WITNESS: Okay.

15 THE COURT: Don't speculate. As opposed to  
 16 the objection of the government, don't speculate.

17 A. Right, and I won't speculate anything. What  
 18 I knew at the time that he was detained by the OSI  
 19 and after that I believed he was still detained up  
 20 until Sunday and that's when I realized that he had  
 21 been released.

22 Q. You mean the Sunday prior to his arrest?

23 A. Yes. So that would be, yeah, the 15th.

24 Q. Well, let me ask it this way, then. When  
 25 you realized he was out, have you called your

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1 counterpart in this investigation, Mr. Sorenson, to  
 2 see how he had been doing pending release?

3       A. So I received a call from FBI that night,  
 4 and it was about 10:00 p.m., and they stated that  
 5 Justice had been at the airport Friday, that Friday  
 6 the 13th it would have been, and he had been at the  
 7 airport attempting to contact TSA regarding Corona  
 8 patients. And so they thought that was suspicious  
 9 behavior and were wondering what his motive was at  
 10 the time. And I wasn't aware of it until that  
 11 phone call, and they were just following up with me  
 12 to see where I was at in my investigation.

13       Q. Okay. Let me go back. I think it's  
 14 partially alluded to in the reports, but I take it  
 15 you know that Airman Justice has been a member of  
 16 the U.S. Air Force for approximately five years  
 17 here at Kirtland Air Force Base?

18       A. Yes.

19       Q. And he's actually -- I take it you know what  
 20 his -- what his -- I've forgot -- what his MO or  
 21 what his job description is at Kirtland, do you  
 22 not?

23       A. To an extent.

24       Q. Well, to the extent you know it, tell the  
 25 Court what he does.

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1       A. Security forces.

2       Q. Okay. Security forces, specifically, not  
 3 law enforcement, but he's charged with making sure  
 4 that the very sensitive weapons systems that are  
 5 stored at Kirtland are safeguarded, correct?

6       A. Correct.

7       Q. And I take it you learned in that capacity  
 8 as the government has alleged in its motion and its  
 9 motion to detain, he has training in firearms?

10      A. Yes.

11      Q. Okay. He also has training in active  
 12 shooting drills. I take it you've gone and looked  
 13 at his performance appraisals and what he does.  
 14 He's actually been involved in defending against an  
 15 active or potential active shooter on base. Do you  
 16 know that?

17      A. I did not know that.

18      Q. No? Well, let me put it this way. With  
 19 regard to information about other mass shootings,  
 20 because some of that is alleged in this motion,  
 21 that he has information about that, have you  
 22 inquired as to whether or not there's a  
 23 work-related purpose to knowledge about other  
 24 active shooters by virtue of what he has to do on  
 25 base?

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1 A. There was no knowledge of that.

2 Q. What do you mean no knowledge?

3 A. From my inquiry with OSI, that was strange  
4 behavior in their eyes.

5 Q. Who says that?

6 A. Special agents with OSI.

7 Q. Which one?

8 A. I -- I primarily worked with Agent Sorenson,  
9 and so, to them, that was a concern, as well.

10 Q. Is that a memo or is that what they told you  
11 on the phone?

12 A. Just verbal communication amongst each  
13 other.

14 Q. Okay. Airman Justice has a security  
15 clearance, does he not?

16 A. I don't know.

17 Q. Well, do you intend to find that out later?  
18 I mean, a security clearance means he has a  
19 background of sorts, does it not?

20 A. Yeah. I don't know to what extent his  
21 clearance is. I don't know enough about it, what  
22 kind of clearance that is.

23 MR. GORENCE: Judge, I'm going to proffer he  
24 has a secret security clearance after an extensive  
25 background by virtue of his safeguarding nuclear

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1 weapons. It's also -- and I might have to continue  
 2 this because I've called people that couldn't make  
 3 it on short notice, but I do want to proffer that  
 4 I've talked to several that go into two things, the  
 5 background that's required for his secret security  
 6 clearance, and it really involves the safeguarding  
 7 of nuclear weapons on a portion of Kirtland Air  
 8 Force Base. Two, he has actively trained for --  
 9 and they do it all the time, with regard to active  
 10 shooters on the facility or intruders of all kinds.  
 11 And specifically, other members of this group, they  
 12 have studied many, many active shooting drills.

13 THE COURT: Why don't we -- why don't we  
 14 address the proffer after --

15 MR. GORENCE: Yes, Your Honor.

16 THE COURT: -- you've completed the  
 17 cross-examination of the --

18 MR. STANFORD: He has a secret clearance.  
 19 We'll stipulate to that. We don't need a  
 20 continuance for that.

21 THE COURT: Okay. Well, let's get through  
 22 this witness' testimony and what he knows and then  
 23 we'll move on to proffers and whether we need to  
 24 continue this hearing.

25 MR. GORENCE: Yes, Your Honor.

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1       Q. So I want to touch on allegations that this  
 2 was -- and it's at page five on the motion to  
 3 detain. It's also the idea that this is a Chinese  
 4 website. I take it you have seen from the OSI  
 5 investigation that Mr. Justice utilized a website  
 6 called Wish.com?

7       A. Correct.

8       Q. And we can say now that Wish.com was the  
 9 website that was used to purchase materials that  
 10 are alleged in this criminal complaint, correct?

11      A. At least some of them, yes.

12      Q. Well, let's just take what you -- we will  
 13 talk about what you called silencer, and I'm  
 14 going -- we'll get into that later. Those were  
 15 purchased off of the Wish.com website; is that  
 16 correct?

17      A. Correct.

18      Q. Now, that is not a Chinese website, is it?

19      A. I don't know about the website, but I do  
 20 know that many of the items that ship from that  
 21 website come from China.

22      Q. Okay. Well, it's alleged in the  
 23 government's response that it's a Chinese website.  
 24 This actually was a big issue on the February 25th  
 25 hearing with Special Agent Sorenson. You know

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1 that? He told you that, wasn't it?

2 A. Again, the details I had was from their  
 3 affidavit, and as far as the website and where the  
 4 items were shipped, I do know through the shipping  
 5 labels that the site provided it was coming from  
 6 China, the items that were shipped. But I don't  
 7 know enough about the website, headquarters or  
 8 where they operate from.

9 Q. Well, I want to get into this because that  
 10 has some nefariousness if you're going to be  
 11 dealing with -- well, first of all, we can conclude  
 12 that Wish.com is not part of what would be called  
 13 the dark web, is it?

14 A. It's easy to access.

15 Q. Okay. Well, if it's easy to access, it's  
 16 not -- as was alluded to in Sorenson's affidavit,  
 17 they called it a dark web. You saw that, right?

18 A. Yes.

19 Q. Okay. And I take it you know that he  
 20 retracted that in the actual hearing when he was  
 21 cross-examined, that Wish.com is a U.S. company  
 22 based out of San Francisco. Has he told you that?

23 A. No.

24 MR. GORENCE: This is why we may have to  
 25 continue this, Your Honor, because I want the full

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1 facts of how this -- this allegation --

2 THE COURT: I don't -- I don't even recall  
 3 in the motion reviewing anything about an affidavit  
 4 by Mr. Sorenson.

5 MR. STANFORD: Your Honor, we're not resting  
 6 anything on the notion that it was a Chinese  
 7 website. The items came from China. That is the  
 8 fact that we intended to put in evidence. We'd be  
 9 happy to stipulate that the website may, in fact,  
 10 be based in the United States. It has little  
 11 bearing on the weight of the evidence in this case.

12 MR. GORENCE: Your Honor, it has lots of  
 13 bearing because, if this is a normal commercial  
 14 transaction by a company licensed to do business,  
 15 for which we're going to get in, he uses his name,  
 16 uses a debit card in his name -- and we'll get into  
 17 the transaction itself where it's held out. This  
 18 has many different items. I just looked at it  
 19 yesterday as a matter of fact. It's biggest  
 20 proponent is it sells all the LA Laker gear.  
 21 They're the sole franchise to do all of this.

22 So what it does is it refutes the idea that  
 23 you're going somewhere in a nefarious way to find  
 24 products that couldn't be sold. And we'll get into  
 25 in terms of what they really are, but I'm just

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1 saying, again, Chinese websites and all of this,  
 2 Amazon supplies products throughout the world.  
 3 Well, one assumes when we buy it it has some  
 4 legitimacy of being legal, and I want to get out  
 5 the fact that this is not -- as a terrorist, we  
 6 look at everything as trying to be secretive. You  
 7 want to hide it from the government what you're  
 8 doing or what you're buying or all the rest of it.  
 9 So I think it is quite relevant on the issue of  
 10 detention.

11 THE COURT: Well, I think it's true that  
 12 some people try to do things more secretly than  
 13 others --

14 MR. GORENCE: It just goes --

15 THE COURT: -- but I didn't -- I didn't read  
 16 anything in this motion to be suggesting that the  
 17 importation of the silencers from China was somehow  
 18 brought into this motion to suggest that there was  
 19 some connection with China other than establishing  
 20 the interstate nexus that's needed. But certainly,  
 21 if you have questions -- I mean, I hear where  
 22 you're trying to go with this. It sounds like  
 23 you're trying to suggest that Mr. Justice may have  
 24 thought this was perfectly legal because this was  
 25 on an open website. I mean, you can ask

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1 questions --

2 MR. GORENCE: I'm just going to make the  
3 record, Your Honor --

4 THE COURT: Okay.

5 MR. GORENCE: -- because I think it is  
6 relevant. Again, if this was purchased off a Silk  
7 Road website with some difficulty to get there, you  
8 have some idea that its contraband and illegal.  
9 There was an allegation, not here, but again it was  
10 in the underlying OSI investigation, that it was  
11 paid in bitcoin.

12 Q. You know that's not true, I take it.  
13 There's credit card receipts for those two  
14 purchases from Wish.com. Have you seen those?

15 A. No.

16 THE COURT: Why don't we -- Mr. Stanford,  
17 are there certain things about this line of  
18 questioning that you know and are willing to  
19 stipulate to so we can get past this?

20 MR. STANFORD: We can stipulate that he  
21 didn't order of the dark web, he didn't order off a  
22 nefarious site. The source of his order is of no  
23 importance to the government. It crossed an  
24 international border and a state line in order to  
25 achieve a nexus. We don't really care how he got

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1 it. The fact of him having it is the crime. It  
 2 doesn't make it more of a crime if he gets it from  
 3 the dark web. It makes it a little sketchy, but it  
 4 doesn't go to establishing the elements of the  
 5 crime. So we're not getting into any of that. We  
 6 don't care about that.

7 MR. GORENCE: Okay. And this isn't a  
 8 preliminary hearing because in a preliminary  
 9 hearing that would be a valid objection. This is a  
 10 detention hearing. We've stipulated to --

11 THE COURT: Well, he's not objecting. He's  
 12 stipulated that it wasn't purchased off a dark  
 13 website. It wasn't secretly purchased, and from  
 14 the government's perspective, with regard to the  
 15 motion to detain they filed, they brought up the  
 16 China connection for purposes of the nexus, not to  
 17 suggest that there was any secretive purchase being  
 18 undertaken.

19 MR. GORENCE: And I think the nexus is just  
 20 importation. There has to be no other nexus other  
 21 than, you know, the importation charge. Let me go  
 22 back, then.

23 Q. So, again, you're saying you don't know how  
 24 he paid for it or when they were ordered?

25 A. Yeah, I didn't look into those details yet.

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1                   MR. GORENCE: Well, with the government  
 2 stipulating they were bought under his own name,  
 3 with a debit card in his name, with his address,  
 4 because I believe that if someone was trying to  
 5 engage in the secretive acquisition of weaponry for  
 6 a nefarious purpose, we can at least stipulate that  
 7 didn't occur here.

8                   THE COURT: I don't --

9                   MR. GORENCE: Otherwise, I'm going to have  
 10 to get someone in to make that record, which I have  
 11 someone who is going to testify to that or I want  
 12 to bring Sorenson because Sorenson --

13                   THE COURT: Well, you asked the government  
 14 to stipulate. There were multiple facts in that  
 15 statement that you were asking the government to  
 16 stipulate to.

17                   MR. GORENCE: Stipulate that they were  
 18 purchased in his name.

19                   THE COURT: All right. Do you know that?  
 20 Do you know whether the guns were purchased in his  
 21 name with a debit card?

22                   MR. STANFORD: I'm pretty sure that's  
 23 correct. I couldn't swear. This is on a criminal  
 24 complaint. He hasn't concluded his investigation.  
 25 I'm not possessed with all of the facts of the

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1 investigation. I'm pretty sure that it was  
 2 purchased in his name. We are not alleging that he  
 3 purchased the silencer through a false identity or  
 4 using a false address.

5 The reason I do have the (inaudible) is  
 6 because his name and base address is on the return  
 7 address of the package, so that would lend me to  
 8 believe -- that would lead me to believe that it  
 9 was ordered that way, too.

10 THE COURT: Okay, so --

11 MR. STANFORD: I don't know if I'm prepared  
 12 to stipulate, but I can say I'm not going to --

13 THE COURT: You're not going to object to  
 14 the proffer that Mr. Gorence has made --

15 MR. STANFORD: No.

16 THE COURT: -- that the silencer and the  
 17 stock kit were purchased in his name using his  
 18 debit card. Okay. So, for purposes of the  
 19 detention hearing, the government will not object  
 20 to that proffer.

21 MR. GORENCE: Yes, Your Honor. Let me move  
 22 on.

23 Q. Okay. I take it you don't know how much was  
 24 paid? I mean, if you saw the invoices, it's 42 for  
 25 both of the alleged silencers and \$12 for this

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1 alleged what they call butt stock.

2 A. You're right, I wasn't certain on prices.

3 Q. All right. Now, let's go to the butt stock.

4 There's a picture of it, and we'll get into the  
 5 photographs from the house. First of all, that  
 6 wasn't attached when it was found in Mr. Justice's  
 7 residence? It wasn't attached to the pistol, was  
 8 it?

9 A. Well, through testimony of another  
 10 individual, which I'm sure will come up in this  
 11 case, there was knowledge that it was attached.

12 Q. My question was, when you found it, it  
 13 wasn't attached?

14 A. When it was found by OSI, it wasn't  
 15 attached.

16 Q. Okay. And that was -- actually, you call it  
 17 butt stock. That was entirely plastic, was it not?

18 A. Yeah, I'm not even sure on all the materials  
 19 but it's a butt stock. It's compatible to a Glock  
 20 pistol.

21 Q. Compatible. And if you look at that, that's  
 22 actually -- the material is not -- is not  
 23 ordinarily what a butt stock is made out of, is it?  
 24 Usually, if you're going to use it, it's made out  
 25 of metal?

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1       A. Well, there's a lot of polymer -- there's a  
 2 lot of different butt stocks out there. This one  
 3 is specifically for that type of a pistol and it's  
 4 common with the Glocks.

5       Q. Okay. Have you seen any screws -- did you  
 6 examine that to see if it was ever attached or  
 7 could have been attached?

8       A. So, in this case, I just saw the photographs  
 9 of this butt stock, and I've seen those exact same  
 10 ones in person and I've handled them before.

11      Q. I understand, but there's a way to determine  
 12 whether it's ever been threaded to a weapon. You  
 13 know that, if you examine it, you can see if it  
 14 actually has any -- it's a screw-like apparatus to  
 15 go into the back of a pistol. You know that, don't  
 16 you?

17      A. Yes. But, again, you know, just from the  
 18 testimony that I -- from another individual that  
 19 witnessed it attached --

20      Q. Who is that?

21      A. -- and -- it was another airman.

22      Q. Well, did you talk to this airman? Is this  
 23 coming --

24      A. It was from an affidavit.

25      THE COURT: There was some reference in --

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1                   THE WITNESS: Right.

2                   THE COURT: -- one of the exhibits, I  
3 thought, to testimony by somebody at that prior  
4 hearing who said that he had -- he had shot --

5                   MR. GORENCE: Silencer.

6                   THE COURT: -- with the silencer.

7                   MR. GORENCE: Yeah, it's about the silencer.  
8 I haven't seen anything about the butt stock.

9                   THE WITNESS: Yes, it is in there, as well,  
10 about the butt stock.

11                  Q. Now, an auto sear, there's no records of  
12 that being purchased from Wish.com, correct?

13                  A. Yes, there is.

14                  Q. He wasn't charged on base with that. Are  
15 you saying there's records that he purchased that?

16                  A. Correct.

17                  Q. Have you seen them?

18                  A. I just -- from the OSI investigation, they  
19 received their initial information from Homeland  
20 Security, and in that they had shipping documents  
21 that showed that it was shipped to Mr. Justice.  
22 But you're right, it wasn't on scene at the search.  
23 It wasn't at the residence. Those items weren't  
24 found.

25                  Q. Okay. An auto sear was not found and you're

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1 saying that there is a document? Because there's  
 2 no allegation of that in the -- in the Article 31  
 3 military code, the idea that that -- have you  
 4 actually seen those documents or are you saying  
 5 someone told you that?

6 A. So the shipping labels were testified --  
 7 well, they were in the affidavit that -- affidavit  
 8 that OSI wrote. And speaking to them I received  
 9 that information from OSI that those items had been  
 10 shipped on a prior occasion to Mr. Justice.

11 MR. GORENCE: Well, Your Honor, I'm going to  
 12 need Sorenson for the continuation because he  
 13 has -- that affidavit, first of all, says there's a  
 14 dark web, bitcoin paid for this, and he refuted  
 15 that and he refutes that there's an auto sear.

16 Q. Have you talked to him? He's actually said  
 17 there was no auto sear paperwork? Do you know  
 18 that?

19 A. There was a shipping label that showed it  
 20 was shipped to Mr. Justice on another occasion. It  
 21 just wasn't located in the search.

22 Q. From Wish.com?

23 A. I'm not 100 percent, but that information  
 24 originally came from HSI that it was shipped to Mr.  
 25 Justice, that product.

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1       Q. And again, you have not seen the label, and  
 2 this is just then secondhand information from  
 3 Sorenson?

4       A. Yes.

5       Q. And there's no photograph of an auto sear on  
 6 any of the photographs from Mr. Mr. Justice's  
 7 phone, correct?

8       A. No, there is on his phone.

9       Q. There's schematics.

10      A. Schematics.

11      Q. We'll get into that. We'll get into the  
 12 schematics that are on Google with regard to that.  
 13 I'm saying there's not a photograph of what would  
 14 actually constitute an auto sear, correct?

15      A. I'm sorry, I'm not -- I want to answer this  
 16 correctly here. Are you saying an actual  
 17 photograph of a specific one, a Glock one? Is that  
 18 what we're talking about?

19      Q. Something that would have been ordered --  
 20 you're saying there's an idea. And this is very  
 21 important, the idea that somebody is trying to get  
 22 a fully automatic weapon. And we'll get into the  
 23 photographs because those are right off of Google.  
 24 I actually Googled them all last night, and  
 25 everything on that, they're screen shots. We will

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1 get into it. Those are all screen shots off of  
 2 Google. You know that, don't you?

3 A. Well, I know you can access that on the  
 4 internet, schematics.

5 Q. Well, we'll get into what's a schematic. My  
 6 question is, is there any photograph of an actual  
 7 auto sear device that theoretically could have been  
 8 purchased?

9 A. The one purchased, I don't recall.

10 Q. I'm just talking about the photographs that  
 11 are on his phone.

12 THE COURT: Well, why don't we --

13 MR. STANFORD: (Inaudible).

14 THE COURT: Yeah. We have some photographs  
 15 that were attached as exhibits.

16 MR. STANFORD: I've got copies.

17 THE COURT: Why don't you -- if you want to  
 18 ask him that question -- he clearly doesn't recall.  
 19 Why don't we refresh his recollection with the  
 20 photos that we have, and you can ask him whether  
 21 there are any photographs in these exhibits of an  
 22 actual auto sear.

23 MR. GORENCE: I'm going to go through every  
 24 photograph, Your Honor. I'm going to go through  
 25 each and every one that the government thought was

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1 relevant.

2 THE COURT: Okay. Let's move on to that,  
3 then --

4 MR. GORENCE: Okay.

5 THE COURT: -- instead of asking him to  
6 guess.

7 MR. GORENCE: I'm not asking him to guess,  
8 but let me just get the facts.

9 Q. So when was -- one wasn't recovered at his  
10 house?

11 A. Right.

12 THE COURT: That's been established. There  
13 was not one --

14 Q. Okay. And there's no one who says they  
15 witnessed an auto sear. All of the people -- he  
16 shoots frequently as a recreational shooter. You  
17 know that.

18 A. I don't know how often he does that, no.

19 Q. Okay. Well, let me put it this way.

20 Multiple colleagues of Airman Justice say they  
21 recreationally shoot, and you've seen that in  
22 affidavits.

23 A. Yes.

24 Q. Okay. And all of those people who say they  
25 have shot with him, no one has said he's ever had a

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1 fully automatic weapon, correct?

2 A. Correct.

3 Q. Okay.

4 MR. GORENCE: If you -- do you have -- can  
5 you give me Exhibit A to your motion? I only have  
6 mine.

7 MR. STANFORD: I was just asking, you're  
8 asking me to give it to him or to you?

9 Q. Okay. I just want to look through it. So,  
10 if you take the first page on the left, that is the  
11 bump stock, correct?

12 A. Well, not a bump stock. That is just a butt  
13 stock for a Glock.

14 Q. Excuse me, I meant to say a butt stock. Is  
15 this the actual picture or is this coming off line?

16 A. To me, it looks like an online photograph.

17 THE COURT: Why don't we -- so that we're  
18 clear we're talking about the same thing, we're  
19 talking about page one from the photo album, a  
20 photo that also has a caption, "You can't shake the  
21 taste of the blood"?

22 MR. GORENCE: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. GORENCE: So I want to just -- let's  
25 just mark that as one.

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1           THE COURT: Well, this is already an exhibit  
 2 and they've been docketed and they have numbers on  
 3 them from the docket. The pages that he received,  
 4 those don't have the docket --

5           THE WITNESS: No.

6           THE COURT: I think, for purposes of  
 7 clarity, maybe we should just use the docket.

8           MR. GORENCE: I don't have the docket.

9           THE COURT: Okay.

10          MR. GORENCE: What I have -- that will be  
 11 helpful.

12          THE COURT: We can make sure we have all --  
 13 we've got the document, but we have -- you're going  
 14 to be going through every single photograph --

15          MR. GORENCE: Yep.

16          THE COURT: -- and asking him questions  
 17 about it? Okay. And this is just for Exhibit A?

18          MR. GORENCE: And F. F, I don't have a  
 19 question on every photograph, but I have some. You  
 20 know what would help? I just don't have the  
 21 numbers.

22          THE COURT: Okay. We're going to get those.  
 23 We'll make them available. That will make it  
 24 easier. Unless he wants to hold it up, and then I  
 25 can see and make sure it's -- okay.

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1                   MR. GORENCE: What is the page on the docket  
 2 of this document, Your Honor?

3                   THE COURT: The first page is, it's docket  
 4 9-1, page two of 44.

5                   MR. GORENCE: Page two of 44, okay.

6                   Q. So this -- just so the Court knows what  
 7 we're looking at, do you think on the left-hand  
 8 side -- and this is off the website for what would  
 9 be the bump stock?

10                  A. The stock, yes, butt stock.

11                  Q. Butt stock. I've got to get -- excuse me.  
 12 And I take it this correlates to the photographs  
 13 or, I should say, what was actually found in Mr.  
 14 Justice's residence?

15                  A. Yes.

16                  Q. And then, "You can't shake the taste of the  
 17 blood," where did that come from? Was that side by  
 18 side or that was just a screen shot?

19                  A. So, as far as the order goes, I'm not  
 20 exactly sure if that was the exact order or not. I  
 21 just know that it's a photograph from the phone.  
 22 Whether it's a screen shot or a photo, these are  
 23 from phone photos.

24                  Q. Okay. Have you -- I guess you haven't  
 25 personally, but do you know if Special Agent

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1 Sorenson has talked to any of Airman Justice's  
 2 colleagues in the 377th Security Division about all  
 3 these common memes and statements in terms of being  
 4 passed around within that particular group?

5 A. So, as far as what divisions or whatever,  
 6 I'm not sure, but he has talked to individuals on  
 7 the base who knew him, yes.

8 Q. Now, the statement "You can't shake the  
 9 taste of the blood," that doesn't indicate future  
 10 terrorist activity, does it?

11 A. Not in itself.

12 Q. Okay. Now, the next photograph which is  
 13 yours -- I have mine on both sides. Can I see  
 14 yours? If you'd put it up, what page?

15 MR. STANFORD: In the interest of saving us  
 16 all time, our next witness is, in fact, Sorenson.

17 THE COURT: Uh-huh.

18 MR. STANFORD: And he will establish that  
 19 Agent Kempton came in on the back end of this  
 20 thing. We're just here on a criminal complaint.  
 21 He hasn't completed his investigation. And we  
 22 could spend two days asking questions of him that  
 23 he doesn't know the answer to because he didn't  
 24 collect these photos. Sorenson collected the  
 25 photos, and he's my next witness.

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1                   MR. GORENCE: Okay.

2                   THE COURT: Okay.

3                   MR. GORENCE: Maybe that would be better,  
4 Your Honor.

5                   THE COURT: Does Sorenson --

6                   MR. GORENCE: I'll resume the cross later,  
7 but if they want to do that with Sorenson, that's  
8 fine.

9                   THE COURT: Okay. So I'll let you step down  
10 at this point. We're going to move on to Sorenson  
11 if we can get him on the phone.

12                  MR. STANFORD: Okay.

13                  MR. GORENCE: Your Honor, can we take a  
14 brief break? It's not that -- there's no water in  
15 here, and I have to go --

16                  THE COURT: We can, sure.

17                  MR. GORENCE: Five minutes. I just have to  
18 get a bottle of water.

19                  THE COURT: Yes, we can take a break while  
20 we get Mr. Sorenson on the phone. And, also, I  
21 guess, since he's going to be questioned about  
22 these photographs, let's make sure he's got them.  
23 You can e-mail him the motion and it will actually  
24 have the docket -- if you download the motion with  
25 the exhibits and with the docket banner --

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1                   MR. STANFORD: Hold on. I'm not capable of  
2 listening.

3                   COURT CLERK: I can e-mail him what's filed.

4                   THE COURT: And then it will have the  
5 actual --

6                   COURT CLERK: Yes.

7                   THE COURT: It will have that?

8                   COURT CLERK: Yes.

9                   THE COURT: Okay. So why don't you do this.  
10 Why don't you e-mail John Stanford, Bob Gorence and  
11 Mr. Sorenson the filed --

12                   COURT CLERK: Okay.

13                   THE COURT: -- motion and then they can all  
14 be looking at the same thing.

15                   MR. GORENCE: So, while you're doing that,  
16 can we take a five-minutes break?

17                   THE COURT: We can. Do you want -- do you  
18 want Carla to e-mail you the filed motion so that  
19 you can pull up on your phone the actual -- you  
20 already have it.

21                   MR. STANFORD: I don't have the -- I could,  
22 yeah. I could --

23                   THE COURT: She'll e-mail it to you, too.

24                   MR. STANFORD: I was just going to ask, can  
25 we let Mr. Gorence finish his questioning with

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1 Agent Kempton? He doesn't need to sit here through  
 2 Sorenson. I suspect everything he wants to ask  
 3 Kempton is really for Sorenson, and I hate to make  
 4 him sit around here. If he doesn't have a lot more  
 5 on the items that would be covered by Sorenson,  
 6 just in the interest of --

7 MR. GORENCE: I have a lot more.

8 MR. STANFORD: With Kempton?

9 MR. GORENCE: A fair amount in terms of  
 10 criminal history and other things.

11 THE COURT: Okay. Well, why don't we move  
 12 on to those questions for Agent Kempton. I mean,  
 13 my only concern about having Agent Kempton excused  
 14 is that, if it turns out that some of the questions  
 15 that Mr. Gorence thought he was getting through Mr.  
 16 Sorenson weren't answered and he has to question  
 17 Mr. Kempton and we can't find him, then we're in a  
 18 position of potentially having to continue this  
 19 again.

20 MR. STANFORD: Yeah.

21 THE COURT: As long as he can make himself  
 22 available to return within 20 minutes.

23 MR. STANFORD: I'm sure he can.

24 THE COURT: Okay. So, Agent Kempton, you're  
 25 still under oath. We're going to continue your

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1 cross-examination. Mr. Gorence is going to move on  
 2 past the photographs.

3 MR. GORENCE: Yes, Your Honor.

4 Q. I take it you have taken custody of the  
 5 alleged silencers?

6 A. No.

7 Q. Okay. So there's been no ATF reported  
 8 examination to see if they actually function as a  
 9 silencer?

10 A. Correct, as in sent for an official  
 11 determination.

12 Q. Well, we --

13 A. Through our ATF experts, it has to get  
 14 shipped off, and then they examine it very, very  
 15 thoroughly.

16 Q. Well, what they do is they fire a firearm  
 17 without it and measure the decibels, and then they  
 18 fire it with the device and see if it actually has  
 19 the type of decibel reduction -- and there's  
 20 regulations with regard to that -- to essentially  
 21 enable it to be a silencer. Until then, it's not a  
 22 silencer, right?

23 A. Well, it still could be a silencer. That's  
 24 what we've determined as of now, that it is, but  
 25 it's going to go through that official

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1 determination.

2 Q. Well, the official -- I mean, it has to do  
 3 with whether or not it actually -- statutorily and  
 4 by your regulations, you can have things that look  
 5 like a silencer and they're called barrel  
 6 extensions. There are all kinds of things.

7 A. Sure.

8 Q. And even if they have baffles, what we're  
 9 going to call vents, they have to have material  
 10 inside so that the gas is diffused -- right?

11 A. Correct.

12 Q. -- and it captures that in such a way that  
 13 you don't have, in essence, the difference in  
 14 pressure to create noise as a projectile emits from  
 15 the end of a barrel. That's how it works?

16 A. Well, you're the expert, not me. You're  
 17 correct.

18 Q. Okay. Now, in this case you've indicated  
 19 that you -- have you visually examined them or only  
 20 in photographs?

21 A. They were photographs --

22 Q. Okay.

23 A. -- of the internal and then the descriptions  
 24 given to me by OSI.

25 Q. Well, let's turn to that one particular

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1 photograph, and that is in the F series. Again, I  
 2 don't have the pagination because I -- have you  
 3 seen a picture of the silencers, Agent Kempton,  
 4 that were taken by OSI?

5 A. Yes.

6 Q. There's only one picture, correct? Let me  
 7 pull it.

8 A. There are other photos.

9 Q. Well, I'm just talking about what was  
 10 attached as Exhibit F to this motion because that's  
 11 all we have. Do you have -- can you pull that up?

12 MR. STANFORD: I don't have that. I put it  
 13 back on there.

14 MR. GORENCE: You only have A, not F?

15 MR. STANFORD: I didn't intend to ask him  
 16 about that.

17 MR. GORENCE: Okay. Well, bear with me. We  
 18 might need the Court's copy.

19 THE COURT: Is this the photo array search  
 20 of the residence and vehicle?

21 MR. STANFORD: Yeah.

22 THE COURT: Okay.

23 Q. While I'm looking, let me ask you, you've  
 24 done a criminal history check of Airman Justice,  
 25 have you not?

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1           A. Yes.

2           Q. He's not a prohibited person from possessing  
3 any one of the 17 firearms, is he?

4           A. He is not prohibited to possess firearms.

5           Q. All right. And outside of the allegation of  
6 the silencers, none of these guns, none of the 17  
7 violated the NFA, the National Firearms Act, or any  
8 other statute, correct?

9           A. Correct. The only two were the butt stock  
10 and the silencers. Those were the only two  
11 prohibited items.

12           Q. Well, the butt stock, to be prohibited, has  
13 to be attached to a firearm?

14           A. Correct.

15           Q. So, in this case, it wasn't, so it's not  
16 prohibited. We can agree on that, right?

17           A. Well, there were -- like I said before,  
18 there was a statement given to where a witness had  
19 seen him use it in that fashion.

20           Q. Okay. What I'm saying is that, as found, it  
21 wasn't illegal?

22           A. Yes.

23           Q. Now, if you want to rely on someone's  
24 testimony that that's exactly what they saw, it's a  
25 different matter. But the question is, in his

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1 house, it was not a firearm because it wasn't  
2 attached?

3 A. Yes.

4 Q. And I guess I'll ask Agent Sorenson in terms  
5 of the location. You do know the firearms were  
6 moved out of safes and things of that nature,  
7 correct?

8 A. Correct.

9 THE COURT: I have Exhibit F. I can give it  
10 to the agent as long as he won't take it out of  
11 order and you can see if you can find the  
12 photograph of the silencers.

13 MR. GORENCE: I have --

14 THE COURT: Do you want me to do that?

15 MR. GORENCE: That would be --

16 THE COURT: I'm willing to lend him my copy  
17 as long as you don't take it out of order, and then  
18 you can identify it by page number and you can hold  
19 up the photo.

20 MR. GORENCE: I have mine out of order.

21 (Discussion off the record.)

22 MR. GORENCE: I found it.

23 THE COURT: Okay.

24 MR. GORENCE: But I don't know what page it  
25 is. Can I --

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1                   THE COURT: Sure.

2                   Q. Agent --

3                   A. Yes.

4                   Q. -- this one -- and I don't have the pages.

5 It says exterior and then firearm silencer. Look  
6 through all of it. This is the only picture I can  
7 see of a silencer.

8                   A. One or more photograph was attached to the  
9 firearm itself.

10                  THE COURT: You're not looking at the back  
11 pages. Those are double-sided.

12                  THE WITNESS: Oh, they are? Thank you.

13                  Q. I want you to look through, and if you  
14 would -- I found one. They're actually together.  
15 And we'll get the page on this, but it just says  
16 exterior. Agent, I want you to pull this one out,  
17 which is exterior firearm silencer, and then  
18 there's another one of the picture --

19                  (Discussion off the record.)

20                  THE COURT: We're going to see if we can get  
21 IT to just pull up the exhibits on these screens  
22 and that will make it easier for all of us.

23                  A. And I apologize. I'm digging here for the  
24 right one. That's pretty -- so there's one -- I  
25 don't want to lose the page -- that's affixed to

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1 the rifle.

2 THE COURT: Could you tell us what the  
3 docket number is? It's nine --

4 MR. GORENCE: This is 44, 9-6.

5 THE COURT: Okay. 44. It's page 44 of  
6 docket entry 9-6.

7 MR. STANFORD: You're looking at a  
8 suppressor? Is that what this is?

9 THE WITNESS: It's attached in one of the  
10 photos.

11 Q. All right. Agent --

12 A. Yes, sir, these are all connected.

13 Q. Okay. And did you find the other one?

14 A. I'm still looking for that.

15 THE COURT: He's still looking. We'll get  
16 them identified and then we'll -- we'll either pull  
17 them up on the screen or we'll copy them so that  
18 you're speaking about two pages. We all have the  
19 two pages.

20 MR. GORENCE: Your Honor, what's the Court's  
21 intention about the noon hour?

22 THE COURT: I would like to just power  
23 through.

24 MR. GORENCE: Then we will.

25 THE COURT: I consulted with the marshal

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1 service and they have a deputy --

2 MR. GORENCE: I want to try to get a bottle  
 3 of water at some point. Obviously, for health  
 4 reasons -- oh, water has been taken off.

5 (Discussion off the record.)

6 THE WITNESS: I think I found that other  
 7 one.

8 THE COURT: Okay. What is the -- it's 9-6  
 9 and then tell us the page number.

10 THE WITNESS: Okay. So 9- -- page 83 of 85.

11 THE COURT: 83, okay.

12 Q. Okay. 83 --

13 THE COURT: I didn't print out the color  
 14 pages.

15 A. Okay.

16 Q. Okay. The only question --

17 MR. GORENCE: Can I show him the copy?

18 THE COURT: Sure.

19 Q. Okay. Let's start with 44, page five. You  
 20 can see -- I'll ask you a question about that.

21 THE COURT: All right. I think -- you need  
 22 to speak into the microphone so that the recording  
 23 device will pick up your voice.

24 Q. Agent, you can see on that photograph that's  
 25 a .22 rifle, is it not?

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1           A. Yes.

2           Q. And that device at the end of that rifle,  
 3 that's not one of the products that were ordered  
 4 and delivered from Wish.com. You know that, don't  
 5 you?

6           A. Yeah. You know, I'm not sure on that  
 7 particular one.

8           THE COURT: Are you talking about page 44?

9           THE WITNESS: Yes.

10           THE COURT: Okay.

11           Q. When you say you're not sure, you can see  
 12 that that has no baffles on it and it's not vented.

13           A. Well, you know, you'd have to pull it off  
 14 and examine the inside.

15           Q. Well, but it looks like a solid tube that  
 16 would extend -- that's a barrel extension from one  
 17 side to the other, but it looks -- let me -- you're  
 18 not sure or you know that's not from Wish.com?

19           A. I'm not sure where this one came from, which  
 20 website it was ordered from.

21           Q. Okay. So this isn't one of the charged  
 22 silencers?

23           A. It is one of the charged silencers. It was  
 24 one that was seized up at the house.

25           Q. Okay. So you're saying there's the -- there

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1 were two that were ordered and this is the third  
 2 silencer?

3       A. So there was one silencer out of three in  
 4 particular that had -- that ATF made a bulletin of  
 5 deeming it being illegal given the name of it,  
 6 inline fuel filter. So, if you ordered it, that's  
 7 how you would order it, as an inline fuel filter to  
 8 disguise what it is. And so ATF had sent a  
 9 bulletin and OSI, I let them see the bulletin, and  
 10 they were able to match one of them that he  
 11 purchased as that product.

12       Q. We're talking about -- yes. But if you'd  
 13 go -- so you're saying you're not sure, but can you  
 14 tell if this doesn't look like what is in the other  
 15 photograph which is --

16           THE COURT: Page 83.

17       Q. -- 83, those are wrapped. So you're saying  
 18 you don't know if this was ordered, but I want to  
 19 show you -- if you go to page --

20       MR. GORENCE: This is Exhibit A and I think  
 21 it's the third page, Your Honor. I don't have the  
 22 page reference.

23       Q. Let me show you. I'll give you my copy.

24           THE COURT: Why don't you find what you're  
 25 looking at in the marked pages so that you can

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1 identify for the record what page it is.

2 So, Agent Kempton --

3 THE WITNESS: Yes.

4 THE COURT: -- if you could find the  
 5 document you're looking at that you're going to be  
 6 testifying about and identify what it is by page  
 7 number.

8 Q. And it's right in the very beginning. I  
 9 think it's the third page. So, if you start from  
 10 the beginning, it's like the third image.

11 A. I looked at the beginning. It's not one of  
 12 those.

13 MR. GORENCE: Your Honor, I need A.

14 THE COURT: Oh, you're back at A?

15 MR. GORENCE: Yes.

16 THE COURT: So are we done with Exhibit F?

17 MR. GORENCE: No. It's going to compare it  
 18 to an Exhibit A exhibit, Your Honor.

19 THE COURT: So you're asking him to compare  
 20 page 83 of Exhibit F to a document in Exhibit A?

21 MR. GORENCE: Are yours paginated?

22 MR. STANFORD: No.

23 MR. GORENCE: It's going to be right in the  
 24 beginning.

25 THE COURT: So is this -- are you talking

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1 about this document with somebody holding --

2 MR. GORENCE: Yes.

3 THE COURT: Okay. This is document 9-1,

4 page four of 44, and, here, you can have mine.

5 Just return it to me.

6 Q. I was close. I said three. It turned out  
 7 to be four. Now, if you see the shooter at this  
 8 range, you see he's got the same -- it's a .22  
 9 rifle with the same, we'll call it device, at the  
 10 end of the barrel, correct?

11 A. Correct.

12 Q. And you call it a silencer, but you haven't  
 13 physically examined that device which was found in  
 14 Airman Justice's residence, correct?

15 A. Correct.

16 Q. You haven't even held -- you haven't looked  
 17 at it. You've only seen the photograph?

18 A. Correct.

19 Q. Now, this photograph gives you a better  
 20 indication and it's in color. Mine is in -- do you  
 21 have that one in color?

22 A. I have seen the colored one.

23 Q. Okay. Based on your training and  
 24 experience, you can see that it's just nothing but  
 25 a cylinder cut on both ends without baffles,

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1 correct?

2 A. Well, you can't see the baffles, whether it  
3 was real or not. You have to see inside.

4 Q. Okay. Some of them are vented externally.

5 Some are not. That's how they work, correct?

6 A. I haven't seen those external vented.

7 Q. Well, in this case, if you haven't examined  
8 them, you have no idea if it has baffles or not?

9 A. Yeah, it's very hard to determine whether  
10 that is a silencer just by looking at it without  
11 hearing or examining the inside.

12 Q. Thank you for that because that's what I'm  
13 getting at. You're telling the Court now it's very  
14 hard to even say it's a silencer, yet it's charged  
15 as a silencer. You know that, right?

16 A. Well, only the ones that were determined.

17 Q. Well, there's three. Excuse me, I cut you  
18 off. You said there were three silencers found,  
19 the two that were ordered off a website and this  
20 being the third. Do you recall that earlier?

21 A. I said there was one that was attached to a  
22 rifle which is in this photo, page 44.

23 Q. And that is the same as page four of Exhibit  
24 A. You've just told us that.

25 THE COURT: Well, I don't know if he said

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1 that.

2 A. No.

3 THE COURT: The photograph on page four,  
4 there's a human in that photograph. Do you know  
5 who that human is?

6 THE WITNESS: I do not.

7 Q. Okay. Well, my question is, and I thought  
8 you had agreed, that that looks like the same .22  
9 rifle with the same silencer. We get a better view  
10 of it.

11 A. Well, the firearms don't look identical, but  
12 the silencers do look similar.

13 Q. Okay. And can we at least agree that you  
14 don't know one way or the other whether this  
15 picture -- this is page four of Exhibit A and  
16 page -- what is that one? 44, you said --

17 A. Correct.

18 Q. -- Exhibit F. You don't know one way or  
19 another just by the photographs alone whether it  
20 would actually be -- it would constitute a  
21 silencer?

22 A. Yes.

23 Q. So, given that, would you want to amend the  
24 complaint to say there's not three silencers? We  
25 don't know that one way or the other. Would that

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1 be a fair statement?

2 A. No, absolutely not. The statement in the  
 3 affidavit the Air Force comprised they mentioned  
 4 there were three of them. Agent Sorenson, who  
 5 would be -- who can testify to this, showed a photo  
 6 to me of the inside to inspect the baffles inside,  
 7 and they appeared to be silencers. And that's what  
 8 they based that off of. They insured that it was  
 9 consistent to a silencer before they determined it  
 10 was one.

11 Q. And maybe I should get this from Sorenson,  
 12 but there were no explosives found in Mr. Justice's  
 13 residence of any kind, were there?

14 A. No.

15 Q. There were no statements indicating that he  
 16 was actually planning any kind of attack, any kind  
 17 of violence towards anyone, correct?

18 A. No statements.

19 Q. Well, I mean nothing on the internet,  
 20 nothing on his phone, nothing of that nature that  
 21 he actually -- outside of -- well, we'll talk about  
 22 the sourcing of documents. Maybe I'll ask Sorenson  
 23 since he found it, but what I'm getting at, you're  
 24 not aware of one actual threat, not one actual step  
 25 in furtherance of any conduct that would constitute

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1 an act of terrorism or the actual illegal -- the  
 2 actual use of a firearm to harm others?

3       A. So, to clarify, the photographs, that's all  
 4 we have right now, are the photographs from the  
 5 phone of what I've testified already. That's what  
 6 I have knowledge of. Now, the rest of the phone,  
 7 the forensic evidence in other aspects of the phone  
 8 such as text messages, websites, et cetera, those  
 9 are under analysis. So those -- that's ongoing.  
 10 But as far as the photos go, this is what we've  
 11 got, what I've testified to.

12       Q. Right. And I might have to come back  
 13 because I think Sorenson might have more direct  
 14 knowledge. But what I'm asking is, on the state of  
 15 your investigation today, from starting in February  
 16 slightly before he was arrested, you don't have one  
 17 shred of evidence that he's actually thinking --  
 18 well, let me put it this way, taking a step, a step  
 19 with conduct or with words, to commit an act of  
 20 violence or domestic terrorism or anything of that  
 21 nature, do you?

22       A. Like I said before, I believe that there was  
 23 red flags, things to be concerned about and to take  
 24 caution with and to open the scope of our  
 25 investigation further.

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1       Q. I understand, but that's not my question. A  
 2 caution is that there seems to be atypical things,  
 3 you know, whether they're open sourced and all the  
 4 rest of it were sourced with Sorenson, but I want  
 5 you to listen to this because I want to say it, do  
 6 you have one piece of evidence, notwithstanding a  
 7 red flag, that he had taken one affirmative step --  
 8 and I know you understand that term as a special  
 9 agent with ATF. Do you have one e-mail, witness  
 10 statement, anything that would show that he  
 11 actually was taking a step towards an act of  
 12 violence or domestic terrorism? Can you answer  
 13 that?

14       A. It's a very long question, and I'm trying to  
 15 be very precise with my answer, but it could be a  
 16 step. I feel safe to say it could be a step  
 17 towards that direction. But it's a long question,  
 18 sir, and I'm trying to answer that honestly.

19           MR. GORENCE: Your Honor, I don't want him  
 20 released and I'm sure he can come back, but at this  
 21 point I think it might be most prudent and  
 22 efficient to hear from Special Agent Sorenson.

23           THE COURT: Okay. So how far -- how long  
 24 would it take you to get back to the courthouse if  
 25 we let you be --

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1                   THE WITNESS: 15 minutes at the most.

2                   THE COURT: Okay. So you have some -- yes.

3                   MR. GORENCE: Your Honor, my client needs to  
4 use the restroom so can we take a break? This will  
5 take five minutes. My cross will take a lot  
6 longer.

7                   MR. STANFORD: No, no, five minutes to  
8 redirect the agent, and then we'll take a recess.

9                   MR. GORENCE: Oh, okay.

10                  REDIRECT EXAMINATION BY MR. STANFORD

11                  Q. Agent Kempton, this case is merely at the  
12 early stage of investigation, is it not?

13                  A. Yes.

14                  Q. And we're merely at the criminal complaint  
15 phase, correct?

16                  A. Correct.

17                  MR. GORENCE: Your Honor, I'm going to  
18 object. This is actually a detention hearing.  
19 I've already stipulated to the proffering of  
20 probable cause in the affidavit. So this is not a  
21 preliminary hearing. This is a detention hearing.

22                  MR. STANFORD: You've spent a lot of time  
23 indicting the lack of completion of some steps.

24                  THE COURT: Right.

25                  MR. STANFORD: I think I'm entitled --

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1 MR. GORENCE: I understand.

2 MR. STANFORD: -- to respond to that.

3 THE COURT: Overruled. Let him address  
4 that. I think that's where he's going and it's  
5 clear that's where he's going.

6 Q. Have you turned in --

7 THE COURT: I can also take judicial notice  
8 of this.

9 MR. STANFORD: If the Court is willing to do  
10 that, I know the Court --

11 MR. GORENCE: I'll stipulate it's  
12 (inaudible).

13 THE COURT: All right. Okay.

14 MR. STANFORD: Okay.

15 Q. Earlier you mentioned the silencer was  
16 advertised as something other than a silencer; is  
17 that correct?

18 A. Correct.

19 Q. Is that a common practice in your  
20 experience?

21 A. Yes.

22 MR. GORENCE: Your Honor, I'm going to  
23 object on foundation. He said he hasn't looked at  
24 the Wish.com. I'm going to object on foundation in  
25 terms of it's unusual he got to see how it's

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1 advertised. He's clearly said he hasn't even seen  
 2 it.

3 MR. STANFORD: I don't know how many  
 4 questions he asked him about the Wish.com website  
 5 as though he authored it himself. I'm merely  
 6 asking if he recognizes what was advertised as  
 7 common practice. I'm not saying anything about the  
 8 website.

9 THE COURT: Okay.

10 MR. GORENCE: The foundation that says he's  
 11 seen what was advertised.

12 THE COURT: Okay. Ask him that question and  
 13 then ask him the next question.

14 Q. Okay. Have you seen -- well, earlier you  
 15 mentioned that the silencer in this case, at least  
 16 one silencer in this case, was advertised as  
 17 something other than a silencer?

18 A. Yes.

19 Q. Have you seen advertisements for items that  
 20 call themselves something else and yet they're  
 21 really a silencer?

22 A. Yes. And I believe before I testified that  
 23 I wasn't aware of the origin of Wish.com, but I am  
 24 familiar with that being a website and I am  
 25 familiar with how they advertise products through

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1 that, through bulletins and through -- I've checked  
 2 out the website before, but I just didn't know more  
 3 about the origins of it, just to clarify that from  
 4 earlier.

5 Q. Okay. And what was it that they claimed the  
 6 silencer was? What was the disguising term they  
 7 used?

8 A. An inline fuel filter.

9 Q. Why would the seller call it that?

10 A. To disguise what the product actually is.

11 Q. Did the silencers -- did any of the  
 12 silencers found in Mr. Justice's possession or the  
 13 one he ordered match the information on the  
 14 silencers researched on his phone?

15 A. Yes.

16 Q. Could the photos of the silencers and  
 17 manifesto found on his phone constitute a plan?

18 A. It could.

19 Q. And would the ordering of those silencers  
 20 and auto sears conversion into a machine gun kit  
 21 constitute a step towards that plan?

22 A. It could.

23 MR. STANFORD: Okay. That's all I have.

24 THE COURT: All right. Agent Kempton, you  
 25 may step down. You're free to leave, but you need

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1 to make sure to answer your -- would it be -- you  
 2 would be contacting him by his cell phone?

3 MR. STANFORD: I'll text him.

4 THE COURT: And get over here quickly,  
 5 within that 15-or-so-minute window that you've  
 6 indicated you can get --

7 THE WITNESS: Yes, Your Honor. And were  
 8 some of these yours?

9 THE COURT: They're all mine.

10 THE WITNESS: And I kept them from getting  
 11 messed up, I'm pretty sure. Yep.

12 THE COURT: Yeah.

13 THE WITNESS: Yeah, just like that.

14 THE COURT: Okay. Thanks.

15 THE WITNESS: They're not upside down?

16 THE COURT: That's okay. I can turn them  
 17 the right way.

18 THE WITNESS: Okay. But they're in order.

19 THE COURT: Okay. And then that's mine,  
 20 too.

21 THE WITNESS: Four, 44. Thank you.

22 THE COURT: All right. We can take a break.

23 Mr. Justice needs to use the restroom, and let's  
 24 try to get Mr. Sorenson on the phone set up. Are  
 25 you okay with going through or do you want to take

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1 a break for lunch?

2 COURT CLERK: I'm all right.

3 THE COURT: Would you all prefer to take a  
4 break until 1:00 because the defendant needs to be  
5 fed or would you prefer that we go through the noon  
6 hour?

7 MR. STANFORD: I'm good, Your Honor.

8 THE COURT: What about the marshal service?

9 MR. GORENCE: Your Honor, I would like to  
10 have a break. I'm trying to really -- if we're  
11 going to go to 2:00, I don't want to go to 2:00  
12 straight. So an hour, whatever, that would be  
13 fine.

14 THE COURT: Is Mr. Sorenson available if we  
15 come back at 12:45, so we take a half-hour break?

16 MR. STANFORD: I'm texting as we speak.

17 THE COURT: Okay. Half an hour should be  
18 enough time for everyone? All right. We're going  
19 off the record.

20 (A recess was held.)

21 THE COURT: Back on the record in United  
22 States of America versus Charles Brent Justice.  
23 Before we move on to the next witness, let me just  
24 ask, is there a reason that the motion to detain  
25 the defendant was filed under seal?

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1                   MR. STANFORD: I didn't intend to file it  
 2 under seal. I just intended to file it parties  
 3 only, not the public. There's some inflammatory  
 4 stuff I thought was in the interest of all of us  
 5 not to have out there. That can certainly be  
 6 redesignated.

7                   COURT CLERK: And he did do it just case  
 8 participants only.

9                   THE COURT: Right, but it's sealed from the  
 10 public, and we need to -- I will leave it under  
 11 seal but it -- you need to figure out which  
 12 portions of this need to be sealed. I mean, we are  
 13 a court of public record.

14                  MR. STANFORD: Sure. Well, I can undo that.

15                  THE COURT: I mean, what you can do, if  
 16 there are certain portions of the exhibits that you  
 17 believe need to remain under seal, you can file a  
 18 motion, whether opposed or unopposed, to keep it  
 19 sealed from the public. I mean, it is case  
 20 participants, but that means it's sealed.

21                  MR. STANFORD: Sure.

22                  THE COURT: And, typically, we will -- you  
 23 know, the Court requires, although parties don't  
 24 always follow the practice, that any sealed  
 25 pleadings only be sealed by leave of Court. I

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1 understand this was quickly developing and a quick  
 2 turnaround so --

3 MR. STANFORD: That's really the way it was,  
 4 and I'm okay with it being unsealed.

5 THE COURT: Is there any portion of it, Mr.  
 6 Gorence, that you believe needs to be sealed?

7 MR. GORENCE: I didn't even know it was  
 8 sealed, so I haven't spoke to my client. I don't  
 9 think there's any legal basis that I could claim a  
 10 seal.

11 THE COURT: I didn't see any of the normal  
 12 stuff that we would redact. I didn't notice that  
 13 there was anything in there. And again, certainly  
 14 the Court will consider concealing things if  
 15 there's a reason, and so I'm not asking you to, at  
 16 this moment, make that determination. We'll keep  
 17 it under seal. How much time do you need to either  
 18 file a motion or have us unseal it?

19 MR. STANFORD: By Monday should be fine.  
 20 But I think you've hit the nail on the head, that  
 21 this was a rapidly developing and evolving  
 22 situation. The facts were coming in, you know, so  
 23 quickly that we're still getting stuff in and we  
 24 didn't know what needed to be protected. But  
 25 that's fine.

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1                   MR. GORENCE: Your Honor, can I consult with  
 2 my client because I didn't know that and now that  
 3 explains some things going on. But it makes it  
 4 seem as if it's nefarious in a different way, the  
 5 very fact that it's sealed, and so I would like to  
 6 consult with my client, should we seal the whole  
 7 thing, because there's a presumption that it's  
 8 open. I don't want to wait for a longer period of  
 9 time. I don't think -- I think it's actually  
 10 his -- unless the government has something, but all  
 11 of this is pretty much public and is coming out.  
 12 No one is here, but could I have one minute to  
 13 consult with him on this?

14                   THE COURT: Sure. On the question of  
 15 whether I give the government till Monday?

16                   MR. GORENCE: Yeah, because I --

17                   THE COURT: Okay. Sure. Consult with him.

18                   MR. STANFORD: And I'm not sure, Your Honor,  
 19 that I need that time.

20                   THE COURT: Okay.

21                   MR. GORENCE: Yeah, we're not moving for any  
 22 of it to be sealed, Your Honor. And I think the  
 23 sealing makes it look, as I said, that there's  
 24 something nefarious there that the public can't  
 25 even know about, so we're not requesting it.

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1                   MR. STANFORD: And I was just reminded that  
 2 one of the reasons we kept it to case participants  
 3 only is there was some discussion of the collection  
 4 methods of the interception of the mail package,  
 5 and those oftentimes the agencies like to keep  
 6 secret. But I think that was already revealed in  
 7 the criminal complaint, if I recall correctly, and  
 8 so we wouldn't really have any further basis for  
 9 needing it sealed.

10                  THE COURT: Okay. Well, do you want, after  
 11 today's hearing, to look at that, and if you  
 12 haven't filed a motion to seal by 5:00 we unseal  
 13 it, or by tomorrow morning?

14                  MR. STANFORD: I think tomorrow morning  
 15 would be fine if that's all right with counsel. I  
 16 don't -- I wanted to just ask the agencies if  
 17 there's anything they want to try to keep secret  
 18 about that method. But like I said, if it's in the  
 19 complaint, the cat is out of the bag.

20                  THE COURT: Okay. So I'll keep it -- we'll  
 21 keep it under seal until noon tomorrow.

22                  MR. STANFORD: That will be good.

23                  THE COURT: Except that if there's a motion  
 24 to seal it, which will be opposed, or to seal  
 25 portions of it, just get it filed by noon, and in

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1 that case we'll keep it sealed until the Court  
 2 rules on that motion.

3 MR. STANFORD: Yes, Your Honor.

4 THE COURT: Okay. So are you ready to  
 5 proceed with your next witness?

6 MR. STANFORD: I am, Your Honor. The  
 7 government would call Nathaniel Sorenson as a  
 8 witness in this case. He's appearing  
 9 telephonically due to his being quarantined as a  
 10 result of the current pandemic.

11 THE COURT: All right. Mr. Sorenson?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: And do we have --

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: We have him not just by the  
 16 phone. We're not just listening to him through the  
 17 phone speaker. He's actually on this.

18 COURT CLERK: Yeah.

19 THE COURT: Okay. All right. You're going  
 20 to be asked to take an oath.

21 THE WITNESS: Yes, ma'am.

22 (NATHANIEL SORENSEN was sworn in.)

23 COURT CLERK: If you could state and spell  
 24 your last name for the record, please.

25 THE WITNESS: Nathaniel Michael Sorenson,

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1 S-O-R-E-N-S-E-N -- S-O-N, forgive me.

2 THE COURT: All right. You may proceed.

3 DIRECT EXAMINATION BY MR. STANFORD

4 Q. Mr. Sorenson, would you tell me what you do  
5 for a living, please?

6 A. I'm a special agent with the Office of  
7 Special Investigations.

8 Q. And what are your duties as a special agent  
9 with the Office -- let me clarify. That is the Air  
10 Force Office of Special Investigations, correct?

11 A. Yes, sir, that is correct.

12 Q. And what does the Air Force Office of  
13 Special Investigations do?

14 A. We conduct ground level criminal  
15 investigations, as well as fraud investigations,  
16 and we also conduct counterintelligence for the Air  
17 Force.

18 Q. What was the last thing?

19 A. Counterintelligence.

20 Q. Counterintelligence, okay. Thank you. And  
21 what are your duties within the OSI?

22 A. I am a criminal investigator, sir.

23 Q. Okay. And how are you involved in the case  
24 against Charles Justice?

25 A. I am the lead case agent.

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1 Q. Did you know Mr. Justice prior to this case?

2 A. I did not.

3 Q. Are you aware that he has a secret level  
4 clearance?

5 A. I am.

6 Q. Is it unusual for an airman to have a secret  
7 level clearance?

8 A. It is not, sir. Most everyone in the Air  
9 Force has at least that level of clearance.

10 Q. Are you aware of what unit Mr. Justice is  
11 assigned to?

12 A. I am.

13 Q. What unit is that?

14 A. The 377th Squadron, systems security  
15 squadron.

16 Q. And what is the duty assignment? What is  
17 the MOS, I believe is the term, of that unit?

18 A. The 377th security squadron provides  
19 security for certain weapons assets that we have  
20 here on Kirtland Air Force Base.

21 Q. Okay. Is that unit charged with responding  
22 to active shooters?

23 A. They would only be charged with that when  
24 and if an active shooter occurred in their place of  
25 responsibility.

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1       Q. And what was Mr. Justice's place of  
 2 responsibility?

3       A. He was controller, and so basically he  
 4 operated (inaudible) and did infantry control  
 5 procedures and things of that nature.

6       Q. Okay. Would it be within the scope of his  
 7 duties to investigate potential active shooters?

8       A. It would not, sir.

9       Q. How did you become involved in this case?

10      A. The Office of Special Investigations team  
 11 was notified by Homeland Security investigators  
 12 that a package was intercepted at JFK Airport in  
 13 customs that was addressed to Mr. Justice with his  
 14 full name and his home address. Contained in that  
 15 package was a detected firearm silencer. It was  
 16 later confirmed to be a firearm silencer, so that's  
 17 when the case was referred to us being that he was  
 18 in Albuquerque.

19      Q. And why would it be referred to you?

20      A. Because we have the primary jurisdiction  
 21 over all Air Force personnel.

22      Q. Okay. You said that was a silencer. Did  
 23 you confirm that the person to whom it was  
 24 addressed was the same Charles Justice that was  
 25 stationed at Kirtland Air Force Base?

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1       A. Yes, sir. The name on the package was  
 2 Charles Brent Justice, and it had his home address  
 3 labeled on the front of it as 760 Bravo Silver  
 4 Berry Circle, Southeast, Albuquerque, New Mexico,  
 5 87116, which also, through our military and law  
 6 enforcement database, we were able to confirm that  
 7 that is, in fact, Mr. Justice's home address.

8       Q. And is it a violation of -- we'll call it  
 9 military law. I may be using the wrong term. But  
 10 is it a violation of military law for him to  
 11 possess that silencer?

12       A. It is if he does not follow the NFA regs --  
 13 regulation process.

14       Q. And in his position, would he be aware of  
 15 the process to get cleared to possess that  
 16 silencer?

17       A. Yes, sir, he would.

18       Q. Is that, in fact, well known to an airman in  
 19 his position?

20       A. Yes, sir, I would say it is.

21       Q. What was the next step in your  
 22 investigation?

23       A. The next step in my investigation was to  
 24 conduct law enforcement records checks to verify  
 25 whether Airman Justice had any criminal history.

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1 And then shortly after that we received  
 2 notification from HSI that they had a listing of  
 3 other items that Airman Justice had ordered to his  
 4 residence, and they relayed to us that there were  
 5 approximately 30 other firearms-related items which  
 6 he had ordered from China that had come through  
 7 customs and to his on-base residence which they  
 8 suspected at least four or five of those could be  
 9 NFA-regulated items.

10 So we drafted a search authorization and  
 11 were granted authority to search Airman Justice's  
 12 on-base residence as well as his vehicles for those  
 13 items.

14 Q. Okay. And will you tell me a little bit  
 15 more about those 30 items that HSI advised he had  
 16 ordered previously? And my first question is they  
 17 were not in transit. Are you saying they had  
 18 already been ordered and, as far as one can tell,  
 19 delivered to him?

20 A. That is correct, sir.

21 Q. Okay. And what were the items?

22 A. Some of the items that I can recall would be  
 23 other firearm suppressors as well as an auto sear  
 24 for a Glock handgun which makes the handgun capable  
 25 of automatic fire, as well as a stock or a butt

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1 stock for a Glock handgun that would allow the  
 2 handgun to be shoulder fired.

3 Q. Okay. And then you said a search warrant  
 4 was authorized for his residence. Did you  
 5 participate in the search of the house?

6 A. I -- I did, sir.

7 Q. What items of significance were found during  
 8 the search?

9 A. Items of significance that were found, we  
 10 found two other firearm suppressors inside of  
 11 Airman Justice's home as well as a third firearm  
 12 suppressor which was affixed to the muzzle of  
 13 another rifle which was inside his vehicle parked  
 14 out at the weapons storage area.

15 As well, we found 17 firearms and just under  
 16 7,000 rounds of ammunition.

17 Q. Okay. Were there any other items that were  
 18 significant to the team uncovered during the search  
 19 that maybe weren't guns or ammo?

20 A. Yes, sir. As I recall, we found  
 21 approximately 200 pieces of government equipment,  
 22 you know, a mixture of between tactical  
 23 communications headsets, we found approximately 166  
 24 of those, as well as armor plating and gas masks  
 25 and helmets and things that are commonly issued to

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1 military personnel, just not in the quantities that  
 2 we found in his home, such as 166 of the tactical  
 3 headsets. There was three helmets, three or four  
 4 sets of armor, as well as two gas masks which are  
 5 not issued to most military personnel at home  
 6 station generally.

7 Q. Okay. Would these things be difficult to  
 8 requisition if he needed them?

9 A. Can you rephrase your question, sir? I'm  
 10 not exactly sure what you mean.

11 Q. Would he be able to get these things through  
 12 official channels if he followed the regulations?

13 A. No, sir. It definitely wouldn't be granted  
 14 for somebody to go source this amount of equipment  
 15 in their personal residence.

16 Q. Okay. Is it usual in your experience for an  
 17 airman to have 17 weapons and 7,000 rounds of  
 18 ammunition and all the body armor and stuff?

19 A. I think what I find unusual about it, sir,  
 20 is it is a base procedure for, if you are going to  
 21 store firearms in your on-base residence, you have  
 22 to receive authorization from the chain of command,  
 23 and Airman Justice had not received that from his  
 24 chain of command. So none of the firearms that we  
 25 found were registered with the installation.

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1       Q. Is there any chance he simply didn't know  
 2 that he was supposed to get authorization for that  
 3 stuff?

4            MR. GORENCE: Your Honor, I'm going to  
 5 object to that given that it's vague and there's no  
 6 foundation and it calls for speculation, what's in  
 7 his mind.

8            THE COURT: All right. Sustained. Why  
 9 don't you have him lay a foundation.

10           MR. STANFORD: Sure.

11           Q. How long have you been in the Air Force?

12           A. I've been in the Air Force just under seven  
 13 years, sir.

14           Q. And are airmen in the Air Force given due  
 15 notice of the requirements for them to possess  
 16 items such as the ones found in his residence?

17           MR. GORENCE: Your Honor, again, I'd like a  
 18 foundation. We'll get into the regs, but there's a  
 19 very big difference, a big difference between  
 20 dormitories and a private residence on base, and  
 21 I'm sure Mr. Stanford, I presume, would know that.  
 22 So I'd ask for the foundation in terms of the  
 23 residence that he's in because they're night and  
 24 day different, as I'm sure Agent Sorenson knows.

25           MR. STANFORD: We're only talking about the

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1 residence that he's in.

2 THE COURT: Okay.

3 MR. GORENCE: Well, the regulations are  
 4 different, so you asked it broadly about would they  
 5 know the regulations. I would like it specific to  
 6 a private duplex.

7 MR. STANFORD: Okay.

8 MR. GORENCE: A residence, not a dormitory.

9 Q. Agent Sorenson, are Air Force personnel  
 10 given due notice of the regulations required to  
 11 possess items such as those found in Mr. Justice's  
 12 residence in various places, be it a dormitory, in  
 13 a Hum-V while riding to work, a personal residence  
 14 such as where Mr. Justice lives or other areas?  
 15 Are they given notice of the regulations required  
 16 for them to possess weapons and items like you  
 17 found in those various locations?

18 A. Yes, sir, they are given those.

19 Q. How difficult would it have been for him to  
 20 get authorization to possess the weapons and  
 21 ammunition that you found at his residence?

22 A. All it is is a form he needs to fill out  
 23 with the make, model and serial number of each  
 24 firearm that he had. He'd get it signed by his  
 25 chain of command and turn it in to the armory.

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1       Q. As the investigator, lead investigator on  
 2 this case, given how easy it would have been for  
 3 him to get permission to have all those things, did  
 4 you form an investigative conclusion as to his  
 5 intentions of him having them without the  
 6 authorization?

7           MR. GORENCE: Objection, Your Honor, calls  
 8 for speculation, his intentions --

9           THE COURT: Overruled.

10          MR. GORENCE: -- unless there's a basis.

11          Q. Can you answer the question?

12          A. Yes, sir. My -- my thought process would be  
 13 that he chose not to register them because he wants  
 14 to conceal the fact that he has them.

15          Q. Okay. Did you interview Mr. Justice  
 16 pursuant to your investigation?

17          A. I did.

18          Q. Tell me if --

19           MR. GORENCE: Your Honor, I would ask for --  
 20 pursuant to Rule 26.2, I don't have -- I've seen  
 21 records that he's been interviewed. He's going to  
 22 ask them. I'd like a foundation as to whether or  
 23 not that's been codified to a document. If so, I'm  
 24 entitled to it, even at a detention hearing. So I  
 25 would ask -- if there's no document or recording,

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1 then, of course, I'm not, but I have reason to  
 2 believe there is, and if so, I'm clearly entitled  
 3 to it if he's going to ask him about a statement.

4 THE COURT: Well, you're not entitled to it  
 5 if he's not going to testify about his own  
 6 statement. If he's asking about the defendant's  
 7 statement --

8 MR. GORENCE: I think that's what the  
 9 question was, did he make a statement, and he's  
 10 going to say what did he say, so I'd like a copy of  
 11 the statement.

12 THE COURT: Right, but you're not entitled  
 13 to that under the rule. Why don't you ask if there  
 14 was a recording of the defendant's statement.

15 Q. Did you record that interview?

16 A. Yes, sir, it was recorded.

17 Q. Okay. And I'm going to ask you about the --  
 18 Mr. Justice's responses to your questions.

19 MR. GORENCE: Well, can I get a copy of  
 20 that, then, Your Honor? I'd like to continue this  
 21 hearing because now I am entitled to it. It's his  
 22 statement, and I don't know what it says, and I  
 23 would like a copy of that. And I can't  
 24 cross-examine in terms of what he's going to say  
 25 because supposedly he's going to say something

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1 about it, and we have the recording, and I don't  
 2 have it.

3 THE COURT: Well, but the defendant is not  
 4 testifying. It's not -- it's not the agent's  
 5 statement that he's testifying about. It's the  
 6 defendant's statement.

7 MR. GORENCE: I agree, Your Honor, but this  
 8 is not his statement. It's something that I'm  
 9 entitled to at this hearing. It exists and I can  
 10 see whether his statement accurately comports with  
 11 what the recording says.

12 MR. STANFORD: Well, I think if that comes  
 13 to bear, Mr. Gorence can file for a  
 14 reconsideration, but I think we're entitled to get  
 15 the answers from this agent at this time regarding  
 16 what he personally observed and heard from the  
 17 defendant.

18 THE COURT: Well, 26.2 pertains to the  
 19 statement of the witness and --

20 MR. GORENCE: Well --

21 THE COURT: -- the defendant is not the  
 22 witness.

23 MR. GORENCE: But I believe, Your Honor,  
 24 that his statement would be incorporated in his  
 25 report. That's his statement. I don't have the

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1 full investigative report which would include the  
 2 defendant's -- I've seen references to it along  
 3 with attachments. I don't have it, but clearly his  
 4 statement is his report in its entirety. Within  
 5 that report will be some attachments upon which  
 6 he's based, so I'm making a request for his report  
 7 which clearly would be within the ambit of the Rule  
 8 26.2. Technically -- okay.

9 THE COURT: Okay. So, under Rule 26.2(f),  
 10 statement is defined as a written statement that  
 11 the witness makes and signs or otherwise adopts or  
 12 approves. Mr. Gorence is arguing -- we haven't  
 13 heard this testimony yet so we don't know whether  
 14 this agent, this witness, has even made a written  
 15 statement about the defendant's interview. So why  
 16 don't you ask that question, and then we'll take up  
 17 the question of whether you're entitled to that  
 18 written statement. But you're not entitled to it  
 19 until after the direct examination anyway if, in  
 20 fact, the statement qualifies under Rule 26.2,  
 21 which we haven't established.

22 MR. GORENCE: And just for the record, Your  
 23 Honor, I agree we can wait. I can take a  
 24 continuance to read it. That's certainly true just  
 25 like at trial. It's the same rule. But my point

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1 is that it's not limited to whether or not Agent  
 2 Sorenson wrote a statement reflecting what he heard  
 3 from the tape recording. I'm requesting -- his  
 4 statement is his report, and I'm requesting the  
 5 report because I believe that -- and, again, I  
 6 might not get it before cross-examination, but  
 7 that's what I'm requesting, is his entire report  
 8 along with attachments.

9                   THE COURT: Okay.

10                  MR. STANFORD: He can still testify as to  
 11 what his impressions were of the defendant. We're  
 12 not putting the agent's statement in issue. I  
 13 haven't even asked a single question.

14                  THE COURT: Okay. You can make your motion  
 15 under rule 26.2 after the direct examination has  
 16 concluded, and then we'll sort out whether there's  
 17 any document to be turned over under the rule.

18                  Q. Agent Sorenson --

19                  A. Yes, sir.

20                  Q. -- so, as you can tell, we're not going to  
 21 get into exactly your statements to the defendant  
 22 and possibly even exactly what he -- what he said  
 23 in response to your questions. What I wanted to  
 24 ask you was whether, as the lead investigator in  
 25 this case, anything about your interview with Mr.

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1 Justice gave you professional concern regarding Mr.  
 2 Justice?

3 A. Yes, sir. There were some things that gave  
 4 me concern as far as his statements.

5 Q. Can you tell me what gave you concern?

6 A. What gave me concern, sir, is, based upon my  
 7 training and experience in doing hundreds, if not  
 8 thousands, of interviews, while I was interviewing  
 9 Airman Justice his responses seemed rehearsed in  
 10 that he knew what he was going to tell me and he  
 11 knew the questions I was going to ask and he knew  
 12 what answers he was going to say before I even  
 13 asked them and he would hold to those. And that's  
 14 what gave me concern, sir, that he had taken this  
 15 and had forethought, knowingly doing the things  
 16 that he did and thought out how he was going to  
 17 explain those actions to law enforcement.

18 Q. Okay. Did you find him to be credible?

19 MR. GORENCE: Your Honor, I'm going to  
 20 object to that in terms of his basis for  
 21 familiarity, his ability to operate as a human lie  
 22 detector. I've never heard that question asked of  
 23 an agent before. It's certainly not admissible in  
 24 any other forum, and it's opinion testimony without  
 25 any basis as an expert.

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1                   THE COURT: All right. Why don't you ask  
 2 him whether there was anything about the -- about  
 3 Mr. Justice's statements or answers that led him to  
 4 believe that Mr. Justice was not being truthful.

5                   MR. STANFORD: And I can go back and lay  
 6 some foundation --

7                   THE COURT: Okay.

8                   MR. STANFORD: -- but this question is asked  
 9 of nearly every agent regarding an interview, and  
 10 this is also not a trial.

11                  THE COURT: Okay. One other -- one other  
 12 thing I want before you continue on the  
 13 questioning. Just for purposes of getting through  
 14 this more quickly, under Rule 26.2, after a witness  
 15 other than the defendant has testified on direct  
 16 examination, the Court, on the motion of the party  
 17 who didn't call the witness, must order an attorney  
 18 for the government to produce for the examination  
 19 and use of the moving party any statement of the  
 20 witness that is in their possession and that  
 21 relates to the subject matter of the witness'  
 22 testimony.

23                  So Mr. Gorence is asking for any reports, if  
 24 there's any written report relating to his  
 25 testimony. I mean, the Court is going to grant

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1 that motion. So, if, in fact, there is a written  
 2 report that this witness has made and signed or  
 3 otherwise adopted or approved and you know about  
 4 that, can we get the process going to get those  
 5 documents over here so we can continue this  
 6 hearing?

7 MR. STANFORD: Why don't I ask the witness  
 8 if we have that.

9 THE COURT: Okay.

10 Q. Agent Sorenson, did you write a report which  
 11 involved you making a statement where you assessed  
 12 Mr. Justice's credibility, which is what I just  
 13 asked?

14 THE COURT: Nope, nope, not limited to that.  
 15 Any -- any written statement that relates to the  
 16 subject of his testimony. He's talked about other  
 17 things, as well, up to this point.

18 Q. Okay. Did you hear the judge's question?

19 A. Yes, I did, sir.

20 Q. Regarding the questions I've asked you so  
 21 far today, did you write a report that speaks to  
 22 the testimony you've made here?

23 A. So the way I will answer is I had a report  
 24 in work. Our investigation is still ongoing. That  
 25 report is an all-encompassing of everything we've

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1 done, and we have not completed all of our steps  
 2 yet. So that report is a draft copy right now and  
 3 is not finalized.

4 Q. And does that report, does it list kind of  
 5 what you did, we executed the search warrant, we  
 6 found these items, or does it also include your  
 7 mental impressions of the way all this stuff  
 8 worked?

9 A. It includes both of those things.

10 THE COURT: Well, let me just ask the  
 11 witness so we can cut to the chase. Your  
 12 incomplete report, have you signed it?

13 THE WITNESS: No, ma'am.

14 THE COURT: Have you adopted or approved it  
 15 at this point in the stage that it's in in draft  
 16 form?

17 THE WITNESS: No, ma'am.

18 THE COURT: I'm sorry, I didn't hear your  
 19 answer.

20 THE WITNESS: No, no. It's only a draft  
 21 form at this point.

22 THE COURT: Okay. Then it doesn't qualify,  
 23 so let's continue.

24 Q. Okay. So you had mentioned a minute ago  
 25 that you'd done hundreds and perhaps thousands of

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1 interviews like this. Did I hear that right?

2 A. That's correct, sir.

3 Q. And as an OSI agent, are you trained to  
4 detect when someone you're interviewing is not  
5 being candid or is trying to lie?

6 A. Yes, sir, we are -- we are trained in signs  
7 of deception.

8 Q. And when you were interviewing Mr. Justice,  
9 were you applying the training that you have  
10 learned in this area and also applying the  
11 experience of having conducted hundreds, if not  
12 thousands, of interviews?

13 A. I was, sir.

14 Q. And based on that, did you find his answers  
15 to your questions to be credible?

16 MR. GORENCE: Your Honor, I have the same  
17 objection, and I think the foundation, has he made  
18 a statement that has proven to be false? The  
19 opinion testimony -- and I've only been doing this  
20 for 37 years, but I've never heard an agent be able  
21 to opine on credibility at a detention hearing or  
22 trial.

23 THE COURT: Well, the rules of evidence  
24 don't apply in the detention hearing.

25 MR. GORENCE: I understand.

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1                   THE COURT: I'm going to let the witness  
 2 answer the question.

3                   MR. GORENCE: Okay.

4                   Q. Okay.

5                   A. You'll have to -- do you mind asking me the  
 6 question again, sir?

7                   Q. I'm sorry. Based on your training and  
 8 experience, did you find his answers credible?

9                   A. No, sir.

10                  Q. Why? Why was that?

11                  A. One that comes to mind clearly is, when I  
 12 was discussing one of the firearm silencers with  
 13 Airman Justice, he told me that the use of that  
 14 silencer was to prevent the smell of gun cleaning  
 15 supplies because it bothered his spouse.

16 Subsequent to that interview, I saw a video with my  
 17 own eyes of that very same firearm suppressor being  
 18 affixed to the muzzle of a firearm and shot through  
 19 which is directly contrary to what Airman Justice  
 20 explained to me that that device was used for.

21                  Q. Okay. So if I can -- if I can restate that  
 22 accurately, he denied having used the silencer as  
 23 it's designed to suppress a firearm, you know,  
 24 report, and then you later saw a video that  
 25 contradicted what he said?

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1                   MR. GORENCE: Your Honor, I'm going to say  
 2 that's not what the agent said. It  
 3 mischaracterizes his testimony. But if he can  
 4 answer it the way it's been asked, I guess it's  
 5 okay, but that isn't exactly what he said.

6                   Q. If I had that wrong, would you mind  
 7 clarifying it for us?

8                   THE COURT: Overruled.

9                   MR. GORENCE: On top of that, he's leading.

10                  THE COURT: Okay. Overruled. You can  
 11 answer the question, and if he mischaracterized it  
 12 you can clarify.

13                  THE WITNESS: I think I understand what he's  
 14 trying to ask, ma'am.

15                  A. The device that I was asking Airman Justice  
 16 about in the interview, he told me it was used to  
 17 prevent the smell of the gun, gun cleaning  
 18 supplies, and he said that he did not use it as a  
 19 firearm suppressor. Yet I watched the video with  
 20 my own eyes watching that firearm suppressor being  
 21 affixed to the end of a rifle and shot through and  
 22 fired through, which is exactly or directly on the  
 23 contrary of what Airman Justice told me that  
 24 firearm was used for, and he even said he did not  
 25 use it for that purpose.

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1       Q. Did you -- were you able to identify the  
 2 person in the video who was shooting that silencer  
 3 or that silencer on the end of a rifle?

4       A. I was.

5       Q. And who was it?

6       A. That was Technical Sergeant Taboada, and his  
 7 first name is slipping my mind at the moment.

8       Q. And are you aware of whether or not Mr.  
 9 Justice and that individual are acquainted?

10      A. I am aware.

11      Q. Are they?

12      A. They are.

13      Q. Where -- what was the source of that video?

14      A. Based upon the witnesses I interviewed who  
 15 were captured within that video, Airman Justice was  
 16 the videographer and made that video himself.

17      Q. Where did you find that video?

18      A. It was on a YouTube site. It was on  
 19 YouTube. dd out of Germany.

20      Q. And who was the -- what was the user name of  
 21 the video posting?

22      A. The user name was C. Justice 2016.

23      Q. Any idea why that was posted on a German  
 24 YouTube?

25      A. I don't know why it would be posted there,

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1 sir. The only thing I can speculate is that it was  
 2 put there to stay off of American viewed YouTubes  
 3 to possibly hide its source of origin.

4 Q. Did you ask Airman Justice about that video?

5 A. I -- that video was brought to my attention  
 6 after the interview, and at that point Airman  
 7 Justice had invoked his right to legal counsel.

8 Q. Okay. And after that, did you try to find  
 9 the video again?

10 A. I have, yes.

11 Q. And is it still present on German YouTube?

12 A. It is not. When I was trying to find that  
 13 video again, it said the video was removed by the  
 14 user.

15 Q. I want to go back to the search a little  
 16 bit. Did you find any silencers attributable to  
 17 Mr. Justice other than the ones in his residence?

18 A. Yes, sir, we found one in his vehicle which  
 19 was affixed to the muzzle of a rifle.

20 Q. And where was the vehicle when you found  
 21 that silencer on the rifle?

22 A. The vehicle was parked out at the 377th  
 23 weapons systems security squadron which is a  
 24 national security area.

25 Q. Okay. What kind of rifle was it?

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1       A. It was a .22-caliber single-load-shot rifle.

2       Q. Okay. Did you review the files saved to Mr.  
3 Justice's phone?

4       A. I did.

5       Q. And you examined those yourself?

6       A. Yes, sir.

7       Q. Did you find any of those files disturbing  
8 in any way?

9       A. Yes, sir.

10      Q. Which ones?

11      A. Specifically, I found approximately 42  
12 images of manufacturing methods for improvised  
13 explosive devices to include Molotov cocktails,  
14 tri-acetone tri-peroxide or TATP, as well as a  
15 couple of others such as a homemade plastic  
16 explosive. Some other things I noticed is there  
17 was multiple images depicting anti-law enforcement  
18 and anti-government type statements either calling  
19 law enforcement officers profane names, joking of  
20 their death, saying that law enforcement officers  
21 beat their wives and as well as some  
22 anti-government stuff, making jokes at the death of  
23 politicians and things of that nature, sir.

24           One thing that probably concerned me the  
25 most out of any of it, though, as I was scrolling,

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1 which was before all of the research on how to make  
 2 IED, there was a photograph which depicted the  
 3 license plate of one of my work colleagues, who is  
 4 also an OSI agent, and the video appears -- or the  
 5 photograph appeared to be taken in the parking lot  
 6 of OSI 14.

7 Some of the other stuff I noticed was there  
 8 was some -- a document saved to phone called The  
 9 Great Replacement.

10 Q. Okay.

11 A. That document is a known white supremacy  
 12 document, and it's known to have insight into the  
 13 mass shootings of both Christchurch, New Zealand,  
 14 as well as the mass shooting last year in El Paso,  
 15 Texas. Both of those shooters referenced that  
 16 document as being their -- one of their  
 17 motivations.

18 Also in the documents on his phone was a  
 19 document which describes in detail of how to create  
 20 a submachine, a 9-millimeter submachine gun, with  
 21 parts you could buy at a hardware store just at  
 22 home. And that document was also locked on his  
 23 phone and I had to have a pass code in which to get  
 24 to it, so it appeared that he had made attempts to  
 25 hide that from anyone who would be able to look at

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1 his phone.

2 Q. Okay. Did you -- did you share with your  
3 colleagues the fact that he had a photograph of one  
4 of their license plates?

5 A. Yes, sir, right away.

6 Q. And did that cause concern among the group?

7 A. Absolutely, sir.

8 Q. Did you have an investigative conclusion as  
9 to why he might have that license plate?

10 A. To identify a person or a vehicle which he  
11 planned to do something with in the future or  
12 somehow to save it for reference for some reason.

13 Q. Is there any job-related reason an airman in  
14 Mr. Justice's position would research hate crimes  
15 or hate speech and save it to his phone?

16 A. Absolutely not.

17 Q. Is there any legitimate reason an airman  
18 would store anti-government rhetoric on his phone?

19 A. Absolutely not.

20 Q. What about racist rhetoric?

21 A. Absolutely not, sir.

22 Q. And what about storing instructions for  
23 making explosives?

24 A. No, sir, no reason for that.

25 Q. Is there any reason that his professional

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1 curiosity, for lack of a better word, might justify  
 2 storing that on his phone?

3       A. Well, I would say no, sir. And my basis on  
 4 that is, if he did have professional curiosity, I  
 5 imagine he would have researched these things maybe  
 6 at the beginning of his job or something to look  
 7 for these signs or these IED documents in his  
 8 workplace, but he did all of this research on the  
 9 20th of January this year and he's near to  
 10 separating from the Air Force. So I'm not sure why  
 11 he would decide to review all this at this point  
 12 being that he's gone the last almost six years  
 13 without needing to look at it.

14       As well, the Air Force has bomb experts,  
 15 explosive experts and official training avenues in  
 16 which he would be able to get this training, but  
 17 all of those explosive and IED manufacturing  
 18 techniques were retrieved from an Instagram group  
 19 which is called Free Rope Ride, and the photo icon  
 20 for that group is a hangman's noose, and all  
 21 throughout that group is white supremacism, racism,  
 22 anti-law enforcement, how to make machine guns, how  
 23 to make bombs, that's all that that group is for,  
 24 and that's where he screen-shotted and saved these  
 25 IED manufacturing techniques.

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1       Q. Okay. So you're saying, if he had  
 2 professional curiosity, the Air Force has fellow  
 3 airmen who could instruct him who are pros at doing  
 4 this if he wanted to learn how to do this?

5       A. Yes, sir. And it's also a biannual  
 6 requirement that airmen receive IED recognition  
 7 training from the base, from the experts. He  
 8 received this training anyway.

9       Q. So he already got that two times a year?

10      A. That's correct, sir. He would have received  
 11 that approximately three times throughout his  
 12 enlistment.

13      Q. And in your job as an OSI agent, have you  
 14 ever run across other airmen who have saved files  
 15 like these to their personal devices?

16      A. No, sir.

17      Q. Did you, in the course of the search of his  
 18 residence, also recover anything else like thumb  
 19 drives, computers?

20      A. Yes, sir, we did.

21      Q. And has anyone had a chance to go through  
 22 those to see if there are similar materials stored  
 23 on those devices?

24      A. I -- I believe we have gone through a couple  
 25 of them. I have not personally, but I know the --

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1 I know the criminal agent who called me had  
 2 reviewed some of those digital media, as well, but  
 3 I don't believe anything else has been found.

4 Q. Okay. Are airmen, in fact, discouraged from  
 5 looking at those kinds of things?

6 A. Absolutely, sir.

7 Q. And from storing them on their personal  
 8 devices like a phone?

9 A. That would be correct.

10 Q. Is there any legitimate purpose that Mr.  
 11 Justice would have for possessing a silencer?

12 A. No, sir.

13 Q. What about a kit to convert a Glock to a  
 14 machine gun with a butt stock?

15 A. No, sir.

16 Q. Do you believe -- based on your involvement  
 17 with this case and your prior experience, do you  
 18 believe Mr. Justice is a flight risk?

19 A. I do.

20 Q. And why is that?

21 A. I'm basing that on the fact that during the  
 22 review of his phone I found a bug-out checklist, if  
 23 you will, where Airman Justice had forethought and  
 24 planned out what he would need to do when he met a  
 25 situation which warranted him having to flee, what

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1 items he needed to bring with him, what he would  
 2 need for his wife, what he needs for his children,  
 3 what firearms, ammo, food and clothes they would  
 4 need. He had a thought-out and planned-out  
 5 checklist with which to do so.

6 Q. Could that list also be for an innocent  
 7 purpose?

8 A. I suppose that it could, sir, but I think in  
 9 general the fact that he had forethought and plan  
 10 to flee gives him the -- not only the ability to do  
 11 so but the ability to do so quickly.

12 Q. Does Mr. Justice have any specialized  
 13 training that makes him prepared to escape or evade  
 14 law enforcement?

15 A. Yes, sir, he does.

16 Q. Tell me about that training, please.

17 A. So, through the United States Air Force,  
 18 they require training that we receive to -- and the  
 19 training is called survival (inaudible), and he was  
 20 trained. And that is a cyber-based training that  
 21 is given to all airmen, especially ones in airman  
 22 status. And what that training does, it teaches  
 23 people to survive in noncivilized environments,  
 24 teaches people to escape capture, to resist capture  
 25 and to evade capture of the enemy.

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1       Q. Okay. Do you believe that he presents a  
2 danger to the community?

3       A. I do.

4       Q. Why is that?

5       A. Because of his training and experience, all  
6 of the documents that we found on his phone where  
7 he is researching the same documents that other  
8 mass shooters researched. He has photographs of  
9 AR-15 magazines with mass shooters' names written  
10 on them. He has multiple firearms. He's received  
11 countless days and hours of firearms and weapons  
12 training. He's researching how to make IEDs and  
13 explosives, and, based upon all of that, I did not  
14 believe that he would be a safe member of society.

15       Q. Have you received training on identifying  
16 active shooters?

17       A. I have.

18       Q. Does Mr. Justice meet that criteria?

19            MR. GORENCE: Your Honor, I'd like a  
20 foundation of what the criteria is and whether it's  
21 actually what he's talking about with an active  
22 shooter.

23            THE COURT: Why don't you ask a little bit  
24 about the training.

25            MR. STANFORD: Okay.

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1       Q. Agent Sorenson, tell me a little bit about  
 2 the training that you've received on identifying  
 3 active shooters and some of the things you've been  
 4 taught to look for when evaluating someone as a  
 5 potential risk for active shootings.

6       A. Okay. The training I received was through  
 7 the federal law enforcement training center in  
 8 Glynco, Georgia. We spent multiple hours going on,  
 9 researching prior active shooters and what signs  
 10 they exhibited, as well as we went through live  
 11 trainings of how to deal with mass shooters in a  
 12 live environment, as well as case studies and  
 13 readings and lectures.

14           And the second part of your question, sir,  
 15 was what signs did I see in Airman Justice with  
 16 that training. The fact that he is researching  
 17 other mass shootings to find their fault, the fact  
 18 that he is stockpiling the amount of weapons and  
 19 ammo to do so, as well as he has enlisted in the  
 20 Armed Forces and received the training to be able  
 21 to do so, which is normally a very honorable thing,  
 22 but we have seen in the past other active shooter  
 23 successfully -- for example, there was one in Texas  
 24 a couple of years ago, the church shooting, who was  
 25 a prior Air Force member. And we have seen these

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1 people have enlisted in the Armed Forces merely to  
 2 receive the firearms and weapons training on the  
 3 taxpayers' dime to be able to use that for a  
 4 nefarious purpose. As well as his forethought  
 5 during my interview, with him having all of his  
 6 answers predetermined and rehearsed, telling me  
 7 exactly what he thought I needed to hear, all of  
 8 those signs put together make me believe that he is  
 9 a threat to society.

10 Q. Okay. I'm nearly finished here. I want to  
 11 go in a little bit different direction for just a  
 12 moment. Are you aware of the pretrial confinement  
 13 review of Mr. Justice?

14 A. I am.

15 Q. And are you aware that several people who  
 16 were interviewed for that review spoke on his  
 17 behalf favorably?

18 A. Yes, sir.

19 Q. Do you know whether the people who spoke  
 20 favorably on his behalf were aware of the materials  
 21 on his phone when they made those statements?

22 A. I know of at least two of those members who  
 23 spoke and wrote affidavits on his behalf, in fact,  
 24 did not know of any of the racist or IED  
 25 manufacturing techniques or anti-law enforcement

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1 rhetoric which he had saved on his phone.

2 MR. STANFORD: Pass the witness, Your Honor.

3 CROSS-EXAMINATION BY MR. GORENCE

4 Q. Agent Sorenson, it's slightly different  
 5 given this environment that we're currently in, so  
 6 not being able to see you, let me ask first on this  
 7 report, when do you anticipate your report being  
 8 finished and who does it go to at that point?

9 A. So the anticipation, sir, is -- it would be  
 10 hard for me to say because every investigative step  
 11 that we do opens another door. So it would be  
 12 really hard for me to give you a strict timeline.

13 But I can answer the second part of the  
 14 question, sir, which is who does it go to. It goes  
 15 to my special agent in charge, and he would review  
 16 that. He would send it up to our region, which is  
 17 our -- sort of a higher headquarters of ours, to  
 18 ask approval to publish. If they bless the report,  
 19 he would sign it, and at that point it would be a  
 20 completed report.

21 Q. Okay. Was it -- did you know -- Airman  
 22 Justice was arrested on February 19th of this year,  
 23 was he not?

24 A. He was.

25 Q. And he was initially held in custody until

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1 that hearing that you've referenced which was on  
 2 February 25th, right?

3 A. That's correct.

4 Q. And that is a reviewing officer. In this  
 5 case, it was Colonel David A. Carlson. He was the  
 6 pretrial confinement review officer, was he not?

7 A. He was, sir, that's true.

8 Q. And tell me, was -- that hearing consumed  
 9 the better part of that day, didn't it?

10 A. I don't -- I don't know how long it took,  
 11 sir. I know that I was a part of it. I was the  
 12 first witness called, and then after that I was  
 13 excused so I'm not sure about how long that took.

14 Q. Okay. So you testified before Colonel  
 15 Carlson?

16 A. That's correct, sir.

17 Q. And that was under oath?

18 A. It was.

19 Q. I don't know the process under the Uniform  
 20 Code of Military Justice. Is that transcribed or  
 21 is that recorded, as well, your statement before  
 22 Colonel Carlson?

23 A. There is a court officer. It's very similar  
 24 to federal court, from what I understand. I do  
 25 believe that there is either a written

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1 transcription or an audio recording of the event,  
 2 sir.

3 Q. Okay. So that would be a completed  
 4 statement under oath that you've given previously  
 5 with the same subject matter as this, correct?

6 A. If a report was finalized by that court  
 7 officer, then I suppose it would be, yes.

8 Q. Well, the court officer, I mean, you  
 9 understand Colonel Carlson did not adopt your  
 10 recommendation nor the prosecutor's recommendation  
 11 under the standard that he was a danger to himself  
 12 or others or a flight risk and released him. He  
 13 disagreed with your assessment. You would agree  
 14 with that, right?

15 A. That is true. That did happen.

16 Q. Okay. Well, and what I'm getting at is, I  
 17 want to get your statement in front of him. I take  
 18 it that you say you're the case agent. You've at  
 19 least collected that information from what would be  
 20 the military detention hearing, have you not?

21 A. I'm not sure I understand what you're trying  
 22 to ask, sir.

23 Q. Okay. Well, the hearing exists. There's  
 24 some sort of record of it, either a transcript or a  
 25 recording. Have you -- have you collected it as

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1 the case agent?

2 A. No, sir, I have not taken that as a part of  
3 my investigation.

4 Q. Well, how does one go about obtaining what  
5 is your prior statement that exists in some form?  
6 We have your report which is still not -- let me  
7 ask you this. Did your report go to Colonel  
8 Carlson even though it was a draft?

9 A. No, sir, it did not.

10 Q. Okay. How does -- where is the record of  
11 the hearing before -- I don't need the whole  
12 hearing. I just want your testimony before Colonel  
13 Carlson. Who has possession of that, that  
14 statement of yours?

15 A. I would imagine that would be kept with the  
16 377th air base wing legal office, sir.

17 Q. Well, you certainly can obtain it as the  
18 case agent with the Office of Special  
19 Investigations, can you not?

20 A. Are you asking me if I have the ability to  
21 obtain the document?

22 Q. Yes. If you're going to be collecting all  
23 the information on a case, which is my  
24 understanding of a case agent even in the military  
25 context, part of that would be all of the

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1 information presented to Colonel Carlson when he  
 2 disagreed with you so profoundly.

3 A. Right.

4 MR. STANFORD: I'm going to object to that.

5 A. So I think I understand --

6 THE COURT: Hold on, hold on. Hold on, Mr.  
 7 Sorenson.

8 THE WITNESS: Oh, okay.

9 MR. STANFORD: Your Honor can read the  
 10 report. It's one of the exhibits. And at the end  
 11 of it, Colonel Carlson, who is neither an attorney  
 12 nor a judge, does not disagree profoundly with  
 13 Special Agent Sorenson. That is a  
 14 mischaracterization.

15 Second of all, for all we know, this is the  
 16 report. Mr. Gorence actually gave it to me. He  
 17 had it before I did. Mr. Sorenson's statement is  
 18 contained within this report. So he's just stated  
 19 he doesn't know whether there was a recording or  
 20 whether there was a transcript. He doesn't know.  
 21 He's being asked to speculate who might have it,  
 22 what it is, where it is. He doesn't know. But we  
 23 have the statement right here.

24 THE COURT: Well, okay. Rule 26.2 pertains  
 25 to a statement in the witness' possession. It can

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1 include a substantially verbatim, contemporaneously  
 2 recorded recital of the witness' oral statement  
 3 contained in any recording or any transcription of  
 4 a recording.

5                   Mr. Sorenson, do you possess any  
 6 substantially verbatim, contemporaneously recorded  
 7 recital of an oral statement that you've made that  
 8 relates to your testimony here today that's  
 9 contained in any recording or any transcription of  
 10 a recording?

11                   THE WITNESS: Did that pertain specifically  
 12 to the confinement hearing, ma'am, or are you  
 13 asking me in general throughout the entire  
 14 investigation?

15                   THE COURT: Do you -- do you have in your  
 16 possession a contemporaneously recorded or  
 17 substantially verbatim transcript or recording of  
 18 an oral statement you have made that relates to the  
 19 testimony you've provided here in court today?

20                   THE WITNESS: The recordings that I  
 21 currently have, ma'am, is a recording of the  
 22 interview between me and Airman Justice and a  
 23 recording of an OSI agent and Airman Justice's  
 24 spouse. Those are the two recordings I have and  
 25 that is it.

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1                   MR. GORENCE: Your Honor, I am requesting  
 2 that, although rule 12 still applies, I have a  
 3 statement of the defendant that has to be turned  
 4 over. I'm asking for that. Two, the Court's  
 5 reading of Rule 26.2, just for the record in case  
 6 there's an appeal, is a little crimped. The  
 7 reality is possession is also constructive  
 8 possession. The law is very clear that a case  
 9 agent who chooses not to obtain something but has  
 10 it in his constructive possession; i.e., his own  
 11 statement which is recorded before a colonel who  
 12 I'm going to say -- I've seen the report. The  
 13 report disagrees and finds that he's not a danger  
 14 or flight risk, so I'm asking --

15                   THE COURT: I'm not bound by anything that  
 16 happened in the Air Force.

17                   MR. GORENCE: Of course not. But I'm just  
 18 saying the characterization, he's offered an  
 19 opinion here. A full colonel in the Air Force  
 20 disagreed. Of course you're not bound by it, but  
 21 the idea that just because he chooses not to obtain  
 22 his tape-recorded statement which he has access to,  
 23 he's in constructive possession of it and I'm  
 24 entitled -- I would like to see the transcript. It  
 25 is clearly a statement he's made.

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1           So, if the Court wants to rule that he  
 2 doesn't physically have it in his quarantined  
 3 hands, that is not the law.

4           THE COURT: No, no, that's not my -- that is  
 5 not what I'm ruling. I'm asking him if he  
 6 possesses any statements, and he has just described  
 7 what he possesses. Now, back to the questions that  
 8 Mr. Stanford asked, or maybe you asked, about who  
 9 has those statements or how -- whether he could  
 10 obtain them, it sounded like it was a differing  
 11 unit. He doesn't have control over the hearing  
 12 officer's statements, does he?

13           MR. GORENCE: I thought he said he did.

14           Q. Let me ask you, Special Agent Sorenson, with  
 15 regard to your status as an agent in the Office of  
 16 Special Investigations, do you have the ability to  
 17 get only your statement, your tape-recorded or  
 18 transcribed statement, that you made to Colonel  
 19 Carlson? Is that within your ability as a special  
 20 agent?

21           A. Honestly, sir, I've never done that before,  
 22 so I don't know what the legal grounds would be as  
 23 far as him being able to release that to me. But  
 24 if it is lawful for them to give that to me, I do  
 25 believe I have the ability to, pending that

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1 knowledge.

2 MR. GORENCE: Well, I'm asking for it, Your  
 3 Honor, particularly if there's appellate review.  
 4 I'm entitled to it. I've never heard of a special  
 5 agent not being able to get -- and I've done a lot  
 6 of OSI investigations with regard to prosecuting  
 7 them in terms of when I was sitting over there.

8 THE COURT: Okay. Well, the question is  
 9 whether it's in his possession or constructive  
 10 possession, and if the hearing was recorded by a  
 11 separate branch and he would -- such as the court  
 12 and he would have to go in and make a special  
 13 request for his recorded testimony today, that's  
 14 not within his possession.

15 MR. GORENCE: I disagree.

16 THE COURT: Okay.

17 MR. GORENCE: And I just want to say, I  
 18 think I'm entitled to my own client's statement  
 19 under Rule 12 if it exists, which it clearly does.  
 20 He's got that. I'm entitled to that even in a  
 21 detention hearing, although the rule triggers after  
 22 arraignment, but they have it already. Next, I  
 23 think I'm entitled to his tape-recorded statement,  
 24 and especially he says he can't get it. He hasn't  
 25 even tried to get it. So I'm asking for both. But

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1 I understand the Court can rule on it, but I  
 2 believe I'm entitled to both.

3 THE COURT: Okay. So I am going to deny  
 4 your request for both of those statements.

5 MR. GORENCE: I also would ask, in the event  
 6 of a de novo appeal, that at least -- because I  
 7 believe Agent Sorenson would testify again, I'm  
 8 going to call him, that he might labor to actually  
 9 ascertain whether he has the constructive power as  
 10 a case agent to obtain all information which would  
 11 be the evidence, and it is evidence we're talking  
 12 about, that was taken by Colonel Walton.

13 THE COURT: Well, that's something that I  
 14 will let you and the government work out.

15 Certainly, Mr. Stanford, if there's -- prior to any  
 16 hearing on an appeal, if there's an ability to --  
 17 if Mr. Sorenson obtains that or has constructive  
 18 possession of that statement, then it would need to  
 19 be produced, and certainly the parties can confer  
 20 and you can come to some agreement for him to get  
 21 the material even if he doesn't possess it within  
 22 the meaning of Rule 26.2, but I'm not going to  
 23 order it yet.

24 MR. STANFORD: I have an idea. What if I  
 25 just ask him nicely? Special Agent Sorenson, would

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1 you mind looking into whether or not you can obtain  
 2 that transcript or recording? And if you can't,  
 3 would you ask what method I could use to get it?

4 THE WITNESS: Yes, sir, I'd have no problem  
 5 doing that.

6 MR. STANFORD: Thank you.

7 Q. Agent Sorenson, you indicated you did a  
 8 criminal history check on Airman Justice. You saw  
 9 that he has no convictions of any type, correct?

10 A. I did see -- I didn't see any prior criminal  
 11 convictions, no.

12 Q. Okay. And in terms of any disciplinary  
 13 actions directed against him while he's been in the  
 14 Air Force for the last five years, I've seen -- one  
 15 has to do with not wearing his beret when he was  
 16 wearing a helmet, and that's part of the report  
 17 actually that went to Captain Walton, correct?

18 A. Yes, sir, I believe that's true.

19 Q. That doesn't involve violence in the  
 20 slightest, obviously. I read it correctly, right?

21 A. The fact of him wearing a helmet instead of  
 22 his required head gear, no, I don't believe that  
 23 involved violence.

24 Q. Okay. And it was required. I mean, he got  
 25 a reprimand, but it was the idea of whether he was

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1 actually on active duty and needing his helmet or  
 2 whether he should have been in a beret, but the  
 3 point is you're not using that to form any basis of  
 4 dangerousness in the slightest, are you?

5 A. The fact that he -- no. So that particular  
 6 disciplinary action, sir, no, I didn't calculate  
 7 that into whether or not he's a danger to society.

8 Q. Okay. Well, it's part of the government --  
 9 it's an attachment to the government's motion to  
 10 detain, so I wanted to clarify that. It bears no  
 11 reference to the relationship to the idea that he's  
 12 a danger to the community or flight risk. No, I  
 13 think we've got that established.

14 Next, there appeared to have been an  
 15 allegation of shoplifting in 2016. Are you  
 16 familiar with that?

17 A. I am familiar with that, sir, but it's a  
 18 little more than an allegation. I mean, he  
 19 received nonjudicial punishment for that action.

20 Q. What I want to get to -- but he wasn't  
 21 pros -- he didn't get a criminal conviction. It  
 22 was handled simply with a warning of some sort by  
 23 the Air Force, right?

24 A. That is -- that is incorrect, sir. Article  
 25 15 is nonjudicial punishment. It is definitely

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1 more than a warning. He lost rank for it. He had  
 2 forfeiture of pay for stealing approximately \$300  
 3 worth of ammo from Sportsmen's Warehouse.

4 Q. Okay.

5 A. But it's definitely more than a warning.

6 Q. Okay. Thanks for clarifying that. But that  
 7 certainly doesn't make him a danger or a flight  
 8 risk, does it?

9 A. I think it just shows a propensity to  
 10 violate the law.

11 Q. Okay. Now, you keep referring to these  
 12 devices, and I want to talk about the three that  
 13 were found at the house, the silencers. Have you  
 14 looked at the Title 18 definition, 18 United States  
 15 Code, of a silencer?

16 A. Yeah. The United States Code 922, sir?  
 17 Yes, sir, I have looked at that.

18 Q. Okay. That's the statutory definition in  
 19 terms of what it actually has to do in terms of  
 20 suppressing sound, and then there are corresponding  
 21 regulations with regard to the degree of sound  
 22 suppression, right?

23 A. I'm unsure of that, sir. What I do know is  
 24 18 United States Code 922 gives the legal  
 25 definition of what constitutes a firearm

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1 suppressor.

2 Q. Okay. And have you done any tests in any  
 3 way to see if these devices actually suppress sound  
 4 in any way?

5 A. No, sir. All that I've done is read the law  
 6 and seen what the pieces were with each of these  
 7 firearm silencers, as well as consulted with the  
 8 experts at the ATF, and we all came to a conclusion  
 9 that the devices that we found met the criteria as  
 10 laid out in 18 United States Code 922, and they  
 11 constituted firearm silencers.

12 Q. Okay. Actually, I just want to use your  
 13 experience because Agent Kempton, I take it, is the  
 14 person you talked to at ATF, correct?

15 A. He's one of the agents I've worked with,  
 16 yes.

17 Q. Okay. Well, you know, I take it, given your  
 18 Glynco training, I would assume, that to actually  
 19 be able to testify that something is a silencer,  
 20 someone has to say that it suppresses sound, right?

21 MR. STANFORD: We're pretty far afield of  
 22 dangerousness and flight risk. Whether or not it's  
 23 a silencer or not, he obviously believes it. Going  
 24 any further, that's an issue for trial or a  
 25 (inaudible) hearing which we're not in.

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1                   THE COURT: Well, although the defendant  
 2 waived his preliminary hearing and probable cause  
 3 has been found to support the charges, one of the  
 4 factors that the Court has to consider in 3142(g)  
 5 is the weight of the evidence, and so I will allow  
 6 this questioning a little bit more.

7                   MR. GORENCE: I understand. I just want --

8                   Q. The fact of the matter -- we'll get into all  
 9 three. You don't know one wit as to whether any  
 10 one of them suppresses the mere decibel. You would  
 11 agree with that? You don't know a thing, do you,  
 12 as to whether or not they really act as a  
 13 suppressor?

14                  A. I don't agree with that, sir. So I've done  
 15 multiple witness interviews of people who have gone  
 16 shooting with Airman Justice and said that he  
 17 refers to these items, which during the (inaudible)  
 18 interview he referred to as muzzle breaks, but he  
 19 referred to his friends that are shooting with him,  
 20 he refers to them as silencers and he shot through  
 21 them. And multiple of the witnesses I have  
 22 interviewed have said that they have greatly  
 23 reduced the sound, as well as I've seen a video  
 24 that he made of the rifle that we found in his  
 25 truck out at the W, which is the west storage area,

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1 that he had -- one of the firearm silencers that we  
 2 found affixed to that muzzle, and he discharged it,  
 3 and I can greatly tell a difference because, being  
 4 a law enforcement officer, having many, many hours  
 5 of firearm training, shooting rifles and handguns,  
 6 what the muzzle shot sounds like and that shot was  
 7 definitely suppressed. So I would say I do know.

8 Q. Okay. Let's go -- if you have the exhibits  
 9 in front of you, Agent Sorenson, I think you're  
 10 talking about -- if you would go to document 9.1,  
 11 page four of 44.

12 A. It will take a second to find it, sir. I  
 13 have a digital copy so it may not correspond  
 14 directly to exactly what you asked me. Let me  
 15 describe what I think it is and tell me if I'm  
 16 looking at the right thing, okay? Make sure we're  
 17 on the same page at least.

18 All right. So page four of 44, I'm looking  
 19 at an individual holding a rifle with the  
 20 suppressor affixed to it as well as my coworker's  
 21 license plate.

22 Q. Okay. Let's start with the license plate.  
 23 You see it says Subaru of Melbourne?

24 A. I do see that.

25 Q. Okay. And I take it you know that Airman

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1 Justice is from Melbourne, Florida?

2 A. I do know that.

3 Q. Okay. And although it's a Colorado plate,  
 4 you can see that on the bottom the  
 5 www.subaruofmelbourne, that actually is the  
 6 dealership in Melbourne, Florida?

7 A. Okay.

8 Q. Well, I mean, I take it you say it  
 9 coincidentally or happens to be someone else in the  
 10 office of OSI?

11 A. It is a special agent's license plate, yes,  
 12 sir.

13 Q. Okay. And in terms of the characterization  
 14 you've drawn, there actually is a different link in  
 15 terms of why Airman Justice might be interested in  
 16 just taking a photograph of coincidentally a  
 17 license plate from Colorado that just happens to be  
 18 from his hometown. Would you at least admit that  
 19 that's an alternative and probably more likely  
 20 scenario?

21 A. So this is taken in OSI's parking lot.  
 22 We've never interviewed Airman Justice before. I'm  
 23 not sure what his reason for coming into our  
 24 parking lot just to take a picture of a license  
 25 plate from his hometown would be, so I would say

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1 that would be a little bit odd, but, sure, I'm  
 2 guessing -- I guess it's possible.

3 Q. Okay. Can you tell -- it's actually  
 4 taken -- this photograph is taken through a  
 5 windshield. He's driving. Again, it doesn't  
 6 necessarily mean it was taken in the OSI lot, does  
 7 it?

8 A. Well, this particular picture, you can  
 9 see -- in the top left-hand corner you can see  
 10 right through that car, and you can see that  
 11 there's a tree as well as a street sign. Those  
 12 match within our parking lot.

13 Q. The street -- I don't see a street sign.  
 14 What are you talking about?

15 A. You should see -- you should see the post  
 16 with the rod with the holes in it right in front of  
 17 the tree.

18 Q. We don't have -- I'm looking at -- it's  
 19 actually at page four of 44 and then page five of  
 20 44, and it's just a --

21 THE COURT: I see what he's talking about up  
 22 here in the top left through the windshield.

23 MR. GORENCE: Okay.

24 Q. Let me ask you, this particular individual,  
 25 I don't need his name, he's actually never had a

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1 threat in any way, correct, directed at him by  
 2 Airman Justice?

3 A. It's actually a female, sir, and, no, she's  
 4 never met him before.

5 Q. Okay. And there's be no attempted contact  
 6 at any time?

7 A. To my knowledge, no.

8 Q. Okay. I'm just saying, in terms of this  
 9 being threatening in some way, I take it she  
 10 doesn't have anything to do with this entire case,  
 11 does she, the investigation of Airman Justice?

12 A. She is a big part of this case. She  
 13 interviewed his spouse. She helped us in the  
 14 search of his residence. She's done records  
 15 reviews with me. She's been involved in many ways  
 16 throughout this case.

17 Q. Do you know when this photograph was taken?  
 18 Did it predate all of that or can you tell one way  
 19 or the other?

20 A. It was taken on October 21st of 2019.

21 Q. Okay. So it greatly predates any of the --  
 22 the commencement of your investigation?

23 A. Well, I'm not sure that gives me any peace.  
 24 Even the fact that it's us, I mean, it's still  
 25 intermingled with all the anti-law enforcement and

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1 anti-government, and if there's anybody on the Air  
 2 Force base that is a figure of law enforcement and  
 3 the government, that would be the Office of Special  
 4 Investigations.

5 Q. Okay. But my question is the photograph was  
 6 taken before there was any idea of the commencement  
 7 of an investigation against Airman Justice,  
 8 correct?

9 A. Well, yes, sir, because we hadn't caught  
 10 (inaudible) yet.

11 Q. Well, had you received the Homeland  
 12 Security, the HSI lead at that point?

13 A. No, sir.

14 Q. And in fact, we'll get into the documents.  
 15 These muzzle extensions were ordered in December of  
 16 2019, correct?

17 A. The muzzle extensions? I'm not exactly sure  
 18 what you're referring to.

19 Q. Well, what you call the two silencers were  
 20 purchased for \$42 on a site called Wish.com, right?

21 A. Yes, there was three different ordered, yes.

22 Q. Well, there were two, and you're saying  
 23 there was -- let me get back to the photograph. I  
 24 want to stay on that before I jump off. So page  
 25 four of 44, that's actually Tech Sergeant McGahau,

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1 is it not?

2 A. I think that might be, sir.

3 Q. What was the name you said before? It was a  
4 different name. You didn't have the name right.

5 A. Right, it was Taboada.

6 Q. Well, it's not Taboada. It's McGahau.

7 Would you agree with that, you were wrong?

8 THE COURT: Well, wait a minute. He was  
9 testifying about --

10 A. Actually --

11 THE COURT: Hold on, Mr. Sorenson. When he  
12 was testifying about the prior person's name who he  
13 couldn't recall, he was talking about a YouTube  
14 video.

15 Q. I think that was slightly different from  
16 this, this being recorded. But he said the shooter  
17 is a tech sergeant and he gave a different --

18 THE COURT: Well, but you haven't  
19 established this is a photo of the video, the  
20 YouTube video.

21 MR. GORENCE: Okay.

22 Q. If you have page four of 44, let me start,  
23 do you remember testifying about this earlier?

24 A. Yes, sir. I think I understand the question  
25 you're asking. So the video that was made --

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1       Q. I'm not asking the video. I want to start  
2 with the photograph. Do you recognize the  
3 photograph?

4       A. I do recognize the photograph.

5       Q. Okay. And you're saying this came from  
6 Airman Justice's phone, right?

7       A. Yes, sir.

8       Q. Okay. Who is the person who is depicted in  
9 the photograph?

10      A. That appears to be Sergeant McGahau.

11      Q. Okay. And have you interviewed Sergeant  
12 McGahau?

13      A. No. So he had been sent PPS to Langley Air  
14 Force Base, Virginia, and due to the travel  
15 restrictions of this virus, we are unable to go  
16 interview him at this time.

17      Q. Well, have you tried to call him  
18 telephonically?

19      A. It's just an agency policy of ours to do  
20 interviews either over Face Time or in person when  
21 possible, and at this point he's a pretty key  
22 witness so I'm trying to wait to do an in-person  
23 interview.

24      Q. Okay. So maybe I misunderstood you, but I  
25 thought you indicated that this person said that

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1 this particular device operated as a sound  
 2 suppressor when he fired it. Are you retracting  
 3 that?

4 THE COURT: He didn't say that.

5 MR. STANFORD: Objection. He's not  
 6 retracting anything.

7 THE COURT: He did not testify to that.

8 Q. Okay. Well, maybe I'm -- okay. Great. You  
 9 said someone indicated that -- I thought it was on  
 10 this photograph -- that it operated as a sound  
 11 suppression device. If I'm wrong, please clarify.

12 A. Yeah, so I said I've done multiple witness  
 13 interviews of people who have shot with him. I've  
 14 interviewed the airman twice and I've interviewed  
 15 Tech Sergeant Taboada, both of which told me that  
 16 he had a sound suppressor affixed to his rifle, and  
 17 that is what Airman Justice referred to it as, and  
 18 that they fired it and that it did suppress the  
 19 muzzle report of the rifle.

20 Now, even in this photo that you're showing  
 21 me, that is Sergeant McGahau, or however you say  
 22 his name, but there are other people present during  
 23 that and multiple people had held and fired that  
 24 rifle. And Tech Sergeant Taboada was one of them  
 25 depicted in the video which I referenced earlier.

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1       Q. Okay. Thank you. Actually, on the picture,  
 2 you can actually look in the right-hand corner, it  
 3 looks like someone is taking a video of that. You  
 4 can see kind of a hand with it looks like a phone.  
 5 Do you see that?

6       A. I can see a hand with a phone. Whether he's  
 7 making a video, I don't know.

8       Q. Well, you didn't find a video of this on  
 9 Airman Justice's phone, did you?

10      A. That's correct, sir. We found video on  
 11 YouTube.db.

12      Q. Okay. And you've given how it was  
 13 hashtags, but you don't have any evidence --  
 14 given that there were multiple people there, you  
 15 don't have the idea that this was posted by -- I  
 16 mean, you don't have any fact actually, other than  
 17 it was somebody that posted it with his name, that  
 18 he was the one that posted it, do you?

19      A. I suppose the user, the YouTube user tab was  
 20 C. Justice 2016. Now, whether or not someone else  
 21 that has the same friends and the same guns that he  
 22 has and posted it and their user ID is his last  
 23 name and first initial, then I suppose it could be  
 24 somebody else.

25      Q. Well, how many people were there shooting

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1 the gun?

2 A. I don't know how many people were shooting  
 3 the gun, but there were probably five or six people  
 4 there.

5 Q. Now, you indicated that HSI said that there  
 6 was -- and this is important -- the sear pin, the  
 7 idea of a device that can transform a firearm to  
 8 fully automatic, and you indicated that this was  
 9 part of your initial lead from HSI?

10 A. That was part of a shipment manifest which  
 11 they relayed the contents of that to us.

12 Q. Okay.

13 A. That was one of the items that was shipped  
 14 to Airman Justice.

15 Q. Okay. Well, are there documents that  
 16 actually reflect that? Are you in possession of  
 17 those with the idea that there was a sear pin  
 18 ordered and shipped?

19 A. So I think we briefly discussed this  
 20 earlier, but Homeland Security wants to protect  
 21 their database and the way that they see this from  
 22 people for their own confidential reasons. So, for  
 23 that purpose, they were not able to provide us a  
 24 copy, but they did verbally tell us what was on  
 25 that manifest.

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1       Q. Well, in this case there's allegations that  
 2 he possessed a sear pin, and yet you know that one  
 3 was not found at his residence, correct?

4       A. That's correct, we didn't find one at his  
 5 residence.

6       Q. And residence, car or anywhere else, a sear  
 7 pin was never found?

8       A. That's correct.

9       Q. And no one who you've interviewed,  
 10 particularly these shooting buddies of his, also in  
 11 the Air Force, no one has ever said he had a fully  
 12 automatic weapon that was being fired at a range in  
 13 any way. They never saw it, correct?

14      A. That's not correct, sir. So I did interview  
 15 a witness who said he did suspect that Airman  
 16 Justice may have an automatic weapon and he bases  
 17 that on the fact that he was a military member for  
 18 several years and had fired automatic weapons  
 19 before and said it nearly matched the (inaudible)  
 20 rate of a generally understood automatic firearm.

21      Q. Okay. Who's that?

22      A. That would be Tech Sergeant Taboada.

23      Q. Taboada?

24      A. That's correct.

25      Q. How do you spell that?

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1           A. T-A-B-O-A-D-A.

2           Q. Now, Airman Justice has access to and is  
3 entrusted with fully automatic weapons in his  
4 normal job duties and responsibilities, correct?

5           A. He is no longer, sir. He's been essentially  
6 removed from that and placed working in the chapel.

7           Q. I understand that, but what I'm getting at  
8 is prior to that -- which obviously happened when  
9 he was arrested. But prior to February 19th, for  
10 as long as he was in the 377th security section, he  
11 had access and used fully automatic weapons in his  
12 job, did he not?

13          A. He was never in armory, sir, if you want to  
14 get signed out for daily use, but he would not be  
15 able to just have general access at any given time.

16          Q. Okay. But he trains on them and is  
17 certified with fully automatic weapons?

18          A. I believe he is.

19          Q. Okay. After Colonel Watson -- Carlson,  
20 excuse me, Colonel Carlson released Airman Justice,  
21 you know he didn't attempt to flee in any way, did  
22 he?

23          A. Well, that -- that's true, sir. He remains  
24 on the installation.

25          Q. Right, and he worked every day as required

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1 with the job he was tasked with, right?

2 A. From what I understand.

3 Q. And he didn't engage in any acts of  
4 violence, correct?

5 A. Not to my knowledge.

6 Q. Okay. And just generally with regard to  
7 what was found at the house, there was, you said,  
8 no sear pin. There's no photograph of a sear pin  
9 on his -- or a fully automatic weapon on his phone  
10 in any way, right?

11 A. That's incorrect, sir. There's multiple  
12 pictures of how to modify firearms to fully  
13 automatic on his phone.

14 Q. I understand those, and you can get those on  
15 Google. Those are schematics. I'm asking for the  
16 hardware. And again, there's pictures of a coat  
17 hanger, but you know those are just screen shots  
18 off of Google, are they not?

19 A. So, during the search of his residence, he  
20 had a vice that looks exactly like the one in the  
21 photo that that auto sear is placed on.

22 Q. I didn't hear. He had a what?

23 A. A vice.

24 MR. GORENCE: What did he say?

25 MR. STANFORD: He said vice.

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1       A. It's a piece of hardware that you hold stuff  
2 in place while you work.

3       Q. Okay. You're talking about in his garage  
4 there's sort of a quasi workbench?

5       A. There is a workbench and it has the same  
6 vice that's in the photo attached to it.

7       Q. And you're saying within the vice there is a  
8 device that would function as an auto sear?

9       A. Directly on top of the vice there is a  
10 device that would make an AR-15 rifle fully  
11 automatic.

12       Q. Okay. I just want to understand. So this  
13 is something that was actually found within his  
14 garage on top of that vice?

15       A. No, sir, we did not actually find it.

16       Q. Okay. You're saying it's a photograph?

17       A. It's a photograph saved to his phone, that's  
18 correct.

19            MR. GORENCE: Do you have that?

20            (Discussion off the record.)

21       Q. Just for the record, you don't have to go  
22 through and show me what photograph. I take it  
23 it's in the -- it's one of the 44 images in what  
24 has been attached as Government's Exhibit A, and in  
25 our break I want you to show me because I don't

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1 know which one that is.

2                   I want to talk for a second about you said  
 3 the other materials that were found in his  
 4 residence. You said there was -- you said several  
 5 helmets. Is that what you said?

6                   A. Yeah, there were armored helmets.

7                   Q. Okay. And he's issued an armored helmet as  
 8 part of his job duties and responsibilities, is he  
 9 not?

10                  A. That's true. He's issued one, but there  
 11 were three separate ones.

12                  Q. Okay. And have you checked with his  
 13 supervisor as to his ability to have had three or  
 14 are you saying he stole them?

15                  A. I have checked with his supervisor and he  
 16 doesn't have an amount of three, so we actually  
 17 have his document that shows everything he was  
 18 issued which he signed for and there's only one  
 19 helmet on that checklist. So how he obtained the  
 20 other three is yet to be determined, but it wasn't  
 21 issued by the Air Force.

22                  Q. Okay. Now, the gas mask, he's also issued a  
 23 gas mask, is he not?

24                  A. At home station, sir, generally airmen  
 25 aren't issued gas masks, and if they are, they're

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1 issued one.

2 Q. Okay.

3 A. There were two gas masks stored next to his  
4 gun locker in his house.

5 Q. Okay. But he is not an ordinary airman with  
6 regard to his 377th job duties and  
7 responsibilities. I take it you've checked to see  
8 if they're actually issued a gas mask, have you  
9 not?

10 A. That may be true, sir. He might be issued a  
11 gas mask, but he's not issued two.

12 Q. So you say one, but how do you know he  
13 doesn't have two different types or whatever?

14 A. So the Air Force only issues one type of gas  
15 mask. They're universal. We don't have multiple  
16 types, and on his list of issued items, there is  
17 not a gas mask listed. There's definitely not two  
18 gas masks and we found two during our search.

19 Q. Okay. If you go to page nine of 44 --

20 A. One second, sir.

21 MR. STANFORD: I'm using the docket, Your  
22 Honor. I thought we were using the docket.

23 MR. GORENCE: It's document 9-1. We've been  
24 using number 44. This would be within the motion  
25 to detain Exhibit A, and it's page nine of 44.

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1 A. I'm on the page, sir.

2 Q. Okay. You see there's a picture. It says  
3 "New year, new me"?

4 A. I do see that picture.

5 Q. Okay. And this came from, as you've  
6 indicated, Airman Justice's phone?

7 A. That's correct.

8 Q. And that's a gas mask, right?

9 A. It is.

10 Q. And this tag you can see that this was  
11 actually -- on this photograph it's got a tag. It  
12 was sent to Airman Maron, Kaley Maron, and you know  
13 who she is, do you not?

14 A. I do.

15 Q. Okay. And so this was actually Airman  
16 Justice taking a picture of himself in his own gas  
17 mask and sending it to one of the work colleagues  
18 who ultimately just moved to Dover Air Force Base,  
19 right?

20 A. That's what it appears to be.

21 Q. Okay. So this doesn't look like -- I mean,  
22 the idea that it's a terrorist, it's Airman Justice  
23 in his own government-issued gas mask sending it to  
24 a friend, you know, and he put a tag line, "New  
25 year, new me." Nothing nefarious about that in any

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1 way, is it?

2 A. So I'm unfamiliar with the tag you're  
 3 representing, sir. I don't see a tag on this  
 4 image.

5 Q. I don't. But I'm saying on the phone  
 6 extraction it shows that he sent it to her, doesn't  
 7 it?

8 A. No. The phone extraction did not show that,  
 9 sir.

10 Q. Okay. So this is the photograph. You  
 11 haven't seen where it was sent to?

12 A. No, sir. The photograph was just saved to  
 13 his saved photos on his phone.

14 MR. STANFORD: Your Honor, we never  
 15 indicated that that photograph depicted terrorism.  
 16 We didn't mention it in any way in our motion, and  
 17 no one has testified that this depicts terrorism.

18 MR. GORENCE: We're going to go through  
 19 every photograph, Your Honor. It's very extensive.

20 THE COURT: Well, let's hurry up and do it.  
 21 It's 2:15 so let's go through -- if we're going  
 22 through every one of them, let's go through every  
 23 one of them.

24 MR. GORENCE: We will. Okay. Your Honor,  
 25 but I just want to know, in terms of there was

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1 testimony about 200 pieces of headsets, was it --  
 2 excuse me, 166 headsets. Do you recall that?

3 A. Yes, sir, I do.

4 Q. I take it you've determined that those  
 5 headsets were discarded government property?

6 A. I've determined that they are sent to the  
 7 government redistribution center. They were not  
 8 discarded.

9 Q. Okay. And how did you -- what does that  
 10 mean, they were sent to some redistribution center?  
 11 What's that?

12 A. So there is a security forces warehouse in  
 13 the security support squadron which takes in all  
 14 old and used equipment, and they give it to a  
 15 redistribution office which is the acronym DRMO,  
 16 which is the Defense Redistribution Management  
 17 Office, and they take that equipment and they  
 18 redistribute it across the government to anyone who  
 19 may be able to use it. And if they do not use it,  
 20 then they wholesale it unless it is deemed unfit  
 21 for use. Then it is destroyed.

22 Q. Okay. You indicated that Airman Justice has  
 23 a new job duty with regard to, in essence,  
 24 maintenance on base. He has that job as long as  
 25 this procedure is -- or I should say this

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1 proceeding as well as the OMI proceeding is  
 2 unfolding, correct?

3 A. You said OMI proceeding. I'm not --

4 Q. I'm sorry, OSI. I've got another murder  
 5 case. It's next week. It's often I get confused,  
 6 I'm sorry. OSI. The point is I just want the  
 7 judge to know that while the OMI proceeding is  
 8 still underway, as well as this criminal  
 9 proceeding, Airman Justice has that job on base,  
 10 does he not?

11 A. He does have a job with the chapel on base.

12 Q. Okay. Similarly, while both these  
 13 proceedings are unfolding, he and his wife are  
 14 allowed to live on base as he has previously and  
 15 since Colonel Carlson released him. They are  
 16 allowed to live on base, right?

17 A. Yes, sir, they would be allowed to live on  
 18 base.

19 Q. Okay. Now, if Judge Khalsa were to release  
 20 Airman Justice under the conditions of Colonel --

21 MR. GORENCE: I need to write this down.

22 Q. -- Carlson or even modified that to include  
 23 an ankle bracelet so that he could not leave the  
 24 base, would you agree that the risk of flight would  
 25 be heavily curtailed?

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1       A. So what I would say, sir, is Colonel Carlson  
 2 was unaware of all the manufacturing methods for  
 3 IEDs, as well as the checklist for him to be able  
 4 to flee during that hearing, as well as anything  
 5 that was found on the phone because we had not yet  
 6 received the warrant to search the phone at the  
 7 time of that hearing, so Colonel Carlson couldn't  
 8 consider anything that was found on the phone  
 9 during that hearing.

10       But what I would say is that, if he were  
 11 released to the base with an ankle bracelet, I do  
 12 not believe that would prevent him from fleeing  
 13 because there would be nothing that would keep him  
 14 from base or keep him from leaving the base.

15       Q. Okay. Well, he doesn't have access to  
 16 weapons at that point given his new job status,  
 17 right?

18       A. He doesn't have access to government-issued  
 19 weapons.

20       Q. Well, I'm saying if he's living on the base  
 21 and can't leave and can't get access to  
 22 government-issued weapons, the risk of obtaining  
 23 one is -- well, it's not going to happen on the  
 24 base. You can agree with that?

25       A. So, when you're saying weapon, that's kind

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1 of vague. Are you specifically referring to  
 2 firearms, sir?

3 Q. Well, yes. I guess there's a kitchen knife  
 4 in the kitchen, but I'm saying a firearm or  
 5 explosive, he can't do that given his current job  
 6 status while he's on the base?

7 A. So I would disagree with that, sir. There  
 8 are weapons in other people's houses. There's  
 9 friends that he has weapons with. There's weapons  
 10 inside the base exchange which his spouse would not  
 11 be prevented from purchasing a weapon there. So I  
 12 wouldn't say it would be impossible for him to  
 13 obtain a firearm on base.

14 Q. Well, you know she lives on base with a man,  
 15 a child that's going to be one later this month.  
 16 You know that?

17 A. I do know that.

18 Q. And you know that she doesn't have any  
 19 criminal history and has been cooperating fully in  
 20 this investigation. Two questions, but she doesn't  
 21 have a criminal history of any kind, right?

22 A. So it's not OSI policy to review criminal  
 23 history of witnesses, sir, so I haven't reviewed  
 24 her history.

25 Q. With regard to the -- if you looked at -- I

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1 want to go to -- okay. Pages -- I think it starts  
 2 at page 27 of 44.

3 A. Okay. Give me one second, sir. Forgive me,  
 4 it's taking a second for the digital document to  
 5 load the pages.

6 All right. I'm on page 27 of 44.

7 Q. Okay. Now, this document -- you can see,  
 8 this is what you're talking about is chemical  
 9 formulas that have to do with theoretically making  
 10 an explosive. Not theoretically. It's kind of  
 11 information about that, correct?

12 A. So these are two of the approximate 42 that  
 13 were saved to his phone. These are actually two  
 14 that were reviewed by an FBI explosives expert who  
 15 opined that these methods would actually work in  
 16 creating explosives.

17 Q. Okay. And these are actually screen shots,  
 18 are they not?

19 A. Yeah, right, they're screen shots of the  
 20 three (inaudible) with the photo icon.

21 Q. And you're saying these screen shots  
 22 actually existed on Mr. Justice's phone?

23 A. That's correct, sir. So, during my search,  
 24 I opened his photos. There was an album that was  
 25 listed all gun stuff, so naturally I started my

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1 search there. I opened that folder, and the first  
 2 approximate 42 photos was these IED manufacturing  
 3 methods.

4 Q. Okay. Well, I don't know about IED. They  
 5 just talked about -- it doesn't say anything about  
 6 an IED in here anywhere, does it?

7 A. So these MTCs and TATP and Molotov  
 8 cocktails, sir, are used by terrorist groups all  
 9 around the world to make IEDs, so I think it's a  
 10 fair assessment to say that they're manufacturing  
 11 methods for making and IED.

12 Q. Okay. What I'm talking about as an IED is  
 13 an improvised explosive device. But what we're  
 14 talking about is just chemicals for the energetic  
 15 material, right?

16 A. Right. This is the method with which to  
 17 make the explosives, the primary explosive for an  
 18 IED. That would be correct, sir.

19 Q. Let me go -- so you're saying that he didn't  
 20 create this, but you're saying that there's  
 21 information to believe that he took a screen shot  
 22 of someone else's post? Do I have that right?

23 A. There's not information, sir. The photos  
 24 were, in fact, saved to his phone so it's  
 25 knowledge. They were saved to his phone, so --

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1       Q. Okay. Here's the one I want. If you would  
2 go to page 30 of 44, and I'm going to want to go  
3 from that series on out. Start at 30 -- I see. Go  
4 to page 30, would you? And it ends at --

5       A. I am on page 30 right now.

6       Q. Okay. Now, in this case, on the image on  
7 the left, this Instagram shot is different than the  
8 one on the right with regard to --

9                   (Discussion off the record.)

10      Q. Okay. Let me go to 38. That's the one I  
11 wanted.

12      A. 38?

13      Q. Yes.

14      A. Okay.

15      Q. Now, this Instagram -- again, I'm not -- if  
16 you look at it, it says "Your Story"?

17      A. I'm sorry, I'm trying to get the page. The  
18 document images, it's taking a second for my laptop  
19 to load the images. Okay. I'm on page 30 now or  
20 38, sir, yes.

21      Q. Okay. And, again, I'm trying to relate this  
22 as Mr. Justice is telling me, where it says "Your  
23 Story," that is not his profile, Airman Justice's  
24 profile in any way, is it?

25      A. No, sir. The Free Rope Rides is just one of

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1 the groups that he follows.

2 Q. Yeah, I'm talking about the top left, when  
 3 it's got an Instagram. Someone has got this as an  
 4 Instagram and they're following this, their  
 5 profile, and it's not Airman Justice's profile on  
 6 Instagram in any way because it doesn't have --  
 7 it's not his picture.

8 A. Oh, okay. What I can tell you, sir, is  
 9 we've gone to his Facebook page. We go inside the  
 10 Instagram account --

11 Q. Yes.

12 A. -- and Airman Justice does indeed follow  
 13 this page.

14 Q. You're saying you've gone -- maybe it's not  
 15 all the detail. So you've gone back to his  
 16 Facebook and you've seen that he actually threads  
 17 through this Rope Rides Free?

18 A. So not his Facebook, sir. We've gone on to  
 19 Instagram with an OSI account and gone to this  
 20 page, and Airman Justice is listed as one of the  
 21 followers of this page.

22 Q. Okay. Gotcha. Okay. If you go back to --  
 23 I just want to go through these pictures quickly.  
 24 The judge has kind of admonished me to do that  
 25 anyway. So if you would go back to page one --

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1 A. Page one?

2 Q. Yes.

3 A. Okay. I am on page one.

4 THE COURT: You're talking about page one of  
5 the motion or --

6 MR. GORENCE: The page one of 44, Your  
7 Honor.

8 THE COURT: Oh, the photos.

9 A. Oh, page one of 44. I'm on page one of the  
10 document. All right. Page one of 44.

11 THE COURT: One of 44 is just the thing  
12 that -- it just says photo album --

13 MR. GORENCE: Okay.

14 THE COURT: -- by Sorenson, Nathaniel, MSA,  
15 USAF, AFOSI.

16 Q. All right. We've already talked about page  
17 two. Page three -- I take it you compiled the  
18 photographs that you thought were significant in  
19 this case? Is that it, Agent Sorenson?

20 A. That is correct, sir.

21 Q. Okay. I just want to go through it. So  
22 page three, it's got a picture of the truck. You  
23 see that in the left-hand side with weapons?

24 A. Yes, sir.

25 Q. Yeah. And this is actually Airman Maron.

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1 We talked about her before.

2 A. That's correct.

3 Q. Have you interviewed her?

4 A. So she -- similar, sir, she's at Dover Air  
 5 Force Base. So what's being done is the captain at  
 6 Dover Air Force Base is going to conduct the  
 7 interview on our behalf, being that we can't travel  
 8 there because of the travel restrictions.

9 Q. Okay. Well, at least in this, she's  
 10 participating in what looks like a shooting  
 11 activity with Airman Justice. There's nothing --  
 12 there's no weapon in this truck that is prohibited  
 13 in any way, is there?

14 A. There is a firearm silencer in the truck,  
 15 sir.

16 Q. Okay. You're saying the same device that we  
 17 talked about before on the .22?

18 A. Yes, sir.

19 Q. Okay. So I just want to go through. Other  
 20 than that, there's nothing you would say is  
 21 incriminating in this photograph?

22 A. Nothing else that I can see, sir.

23 Q. Okay. Number -- down on the right it says,  
 24 "In a free society you can own both." Obviously,  
 25 some people believe in marijuana legalization, and

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1 the top is just the Second Amendment. Maybe it's  
 2 fully operational. I don't know. But there's  
 3 nothing about that that indicates that someone is a  
 4 terrorist, does it?

5 A. Well, I think what the photo insinuates,  
 6 sir, is that, quote, unquote, in a free society you  
 7 can smoke marijuana and own a submachine gun.

8 Q. Well, you can definitely smoke -- I mean,  
 9 that's a national debate. Nothing about the  
 10 marijuana that you thought that's constituting  
 11 anything illegal, is there? It's a political  
 12 debate.

13 A. Right. So I don't think that my opinion on  
 14 marijuana is truly relevant to how I described the  
 15 photo. I just described the photo as what it said,  
 16 sir.

17 Q. Okay. I'm just trying to get -- these have  
 18 been characterized as anti-government, anti-law  
 19 enforcement or promoting some sort of violent  
 20 behavior. Do you think this depicts that?

21 A. I don't think that this photo in general is  
 22 anti-government, anti-law enforcement or violent in  
 23 nature. I just think that what it is is, because  
 24 it was based here in Airman Justice's phone, Airman  
 25 Justice's view of a free society, he believes that

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1 machine guns and marijuana should be owned by the  
 2 public, is kind of how I'm taking this.

3 Q. And that's legitimate political debate.  
 4 You'd agree with that, right?

5 A. I suppose it could be.

6 Q. Okay. I think we've gone over four and  
 7 five. Actually, five and six have a picture,  
 8 that's just a tailpipe. It's actually a tailpipe.  
 9 I guess it collects oil in some way, oil catcher on  
 10 the back of a tailpipe?

11 A. Yeah, I'm unfamiliar, sir. I've never seen  
 12 anybody put a pipe on the end of their tailpipe to  
 13 catch oil. I mean, I actually think it would trap  
 14 your exhaust gasses and that would cause your  
 15 engine to not run. It wouldn't have anywhere to  
 16 go. It's odd.

17 Q. Okay. Well, do you know what this is? It's  
 18 put in here to support detention, so I kind of want  
 19 to get a record of it. So do you even know what  
 20 this depicts one way or the other?

21 A. The red cylinder with the brown substance in  
 22 the bomb bottom of it?

23 Q. Yeah.

24 A. I don't know what that is, sir.

25 Q. Well, if you don't even know what it is, why

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1 would you collect it as if it's something  
2 incriminating? I just want to know, you know, what  
3 is it?

4 A. I suspected it to be a possible explosive  
5 substance being that there was other videos and  
6 photos on his phone about how to manufacture these,  
7 so I think for that purpose.

8 Q. Okay. And that's a wild guess and you have  
9 nothing to back that up, right?

10 A. The 42 other images as well as the three  
11 videos explaining how to make explosive material is  
12 what I base that off of, sir.

13 Q. Okay. On the right of page six, this is  
14 again a screen shot of what is widely disseminated  
15 on the internet?

16 A. Right. That's a screen shot of a device  
17 that would make an AR-15 fully automatic.

18 Q. And if you look at page seven, the same  
19 thing? It's the same thing, screen shots off the  
20 internet, measurements that really go to the figure  
21 on the right side of six as well as supposedly  
22 clips that would work that way, as well, right?

23 A. Right. So these are kind of -- regardless  
24 of where they were retrieved from, whether it be  
25 the internet or otherwise, specifications on how to

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1 create a device that would make an AR-15 fully  
 2 automatic.

3 Q. Okay. But anybody -- the point is that  
 4 these are -- they're not illegal to look at,  
 5 possess, trade or have on your phone in any way  
 6 because they're on the internet, they're widely  
 7 disseminated and the government hasn't seen fit to  
 8 classify them in any way, right?

9 A. I suppose that could be true.

10 Q. I don't want you to suppose. You know that  
 11 to be true, right? This is public information.

12 A. The documents are, sir. I guess what I was  
 13 confused about was your speculation about the  
 14 government's need to regulate them or something of  
 15 that nature, so that's why I answered in that  
 16 fashion.

17 Q. Well, I mean, the law is the law. But  
 18 you're not saying it's remotely illegal or actually  
 19 it's one's First Amendment right to look and screen  
 20 shot anything that's publicly available. It's not  
 21 classified or contraband. These images are not  
 22 contraband. You'll agree with that?

23 A. That's true, sir.

24 Q. And the same when you go to page eight, more  
 25 schematics with regard to -- these are, again, off

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1 of some website on a Lightning Link. These are  
 2 publicly available documents for anybody to look as  
 3 of right -- as an American under their First  
 4 Amendment, right?

5 A. Yes, sir.

6 Q. The same with page nine. We've talked about  
 7 that schematic. It's the same concept. And we've  
 8 talked about this picture of a gas mask, and you  
 9 don't know actually who took it or how it exists,  
 10 but nothing about those, again, a publicly  
 11 available document and a picture of an individual  
 12 in a gas mask who has access to a gas mask, right?

13 A. I'm not sure I understand what you're asking  
 14 me, sir.

15 Q. Okay. Well, I'll take -- I'll break it  
 16 down. On page nine on the left-hand side, this  
 17 basically follows the Lightning Link site with  
 18 regard to publicly available information regarding  
 19 firearms. That's what that is.

20 A. Okay.

21 Q. Well, no, you're the one who collected it.  
 22 Do you know what it is? I'm asking you. You make  
 23 it sound like I know.

24 A. Well, no, sir. You haven't asked me  
 25 questions. You told me what something was, so, I'm

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1 sorry, I didn't hear --

2 Q. Well, it's called leading and I thought I  
3 did it with intonation. But I'll break it down.  
4 Do you recognize what is on the left-hand side of  
5 page nine?

6 A. Yes, that's a photo that was on Airman  
7 Justice's cell phone.

8 Q. Right. And that photo is a photo that's  
9 been -- it's been -- what do you call it -- it's a  
10 screen shot that goes along with what was on page  
11 eight, the Lightning Link screen shot, correct?

12 A. Right.

13 Q. Okay. And again, publicly available  
14 information that every American has a right to read  
15 and possess under their First Amendment, right?

16 A. Yes, sir. That's true.

17 Q. Okay. We've already talked about the  
18 right-hand side of page nine. Okay. Page ten, if  
19 you'd go to that.

20 A. Okay. I'm there.

21 Q. Okay. The left-hand side has some sort of  
22 meme about if you don't like the way things work in  
23 America?

24 A. That's correct.

25 Q. You collected this. Is there something

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1 about this that would make someone violent or a  
 2 terrorist or is this basically political  
 3 expression?

4 A. So, based upon the picture that I'm reading,  
 5 sir, "Then move to Somalia, vote Carter," and then  
 6 there's the blue path which the little person in  
 7 the photo is walking on, "Teach doubt in authority,  
 8 engage in black markets, hide income, disobey,  
 9 resist, mock, delegitimize the system," I would say  
 10 that's not an opinion. Those would be acts to  
 11 either hide money from taxes, to disobey the law,  
 12 to resist the law, to mock and delegitimize it and  
 13 to teach others to doubt the authority, so I would  
 14 say it's a little more than a stance in politics.

15 Q. Well, it doesn't say anything illegal. One  
 16 can -- take each one of those statements. You can  
 17 engage in a black market. That's not necessarily  
 18 illegal. You can hide income. It doesn't say  
 19 engage in tax fraud. You can disobey in this  
 20 country, can't you?

21 A. I'm sure you can.

22 Q. You can resist and you can mock and you can  
 23 delegitimize the system. It sounds like a current  
 24 political campaign to me, at least one that I can  
 25 identify.

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1                   THE COURT: Right. Why don't -- let's try  
 2 to keep commentary to a minimum.

3                   MR. GORENCE: Yes, sorry, Your Honor.

4                   Q. This doesn't constitute a talisman or let me  
 5 say a beam to the future that someone is going to  
 6 be engaged in violent criminal behavior, does it,  
 7 or are you able to opine that if they have this on  
 8 their phone they're going to engage in terrorism?

9                   A. I would say this in and of itself, sir, does  
 10 not constitute that somebody is a terrorist.

11                  Q. Okay. On the right-hand side, what does  
 12 that show, the schematic?

13                  A. That would be a Lightning Link for a device  
 14 which makes an AR-15 fully automatic.

15                  Q. Okay. Again, this is a screen shot of  
 16 something that's publicly available to any  
 17 American, right?

18                  THE COURT: Well, that's mischaracterizing  
 19 this. This appears to be a screen shot of an  
 20 Instagram.

21                  MR. GORENCE: Oh, I thought he said it was  
 22 the link again that we talked about before.

23                  Q. Anything classified in this?

24                  A. I don't believe so.

25                  Q. Okay. Page 11, you have these in terms

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1 of -- I just want to go through. The left is a  
 2 picture. "When you think you ran over a dog but  
 3 it's just a politician," and it looks like someone  
 4 is unhappy. That's fair political comment, isn't  
 5 it?

6 A. I suppose that is a stance, but to me it  
 7 looks like the individual in the picture is Robert  
 8 Downey, Jr., and he's like happy it's a politician  
 9 and not a dog, so that's how I view this picture.

10 Q. Okay. But would you agree it's fair  
 11 political comment, not an indication that someone  
 12 is going to engage -- because that's what we're  
 13 here about. The government is alleging this is a  
 14 potential domestic terrorist. So would you agree  
 15 that is political comment?

16 A. I don't think it's a comment, sir. I think  
 17 it's, at best, a not very good joke.

18 Q. Okay. Well, let's just leave it as a joke.  
 19 It has nothing to do with someone being indicative  
 20 of future violent conduct, does it?

21 THE COURT: We're going to be here all day  
 22 if we go through each one and ask those same  
 23 questions of each photograph. So why don't we do  
 24 this a different way. Why don't you ask him if  
 25 there are any photographs taken alone that are

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1 significant in and of themselves.

2 MR. GORENCE: Okay.

3 THE COURT: Because clearly the testimony  
 4 has been it's the combination of circumstances that  
 5 have caused the conclusions to be drawn by the  
 6 various law enforcement agents that have testified.

7 MR. GORENCE: Yes, Your Honor, and I'm  
 8 saying it's part of the record and I get to go over  
 9 it.

10 Q. Let me go back because they kind of are  
 11 interspersed. I do see and I'll acknowledge one is  
 12 racist, one and only one, but let me ask you, which  
 13 of these items that you collected in the 44 pages,  
 14 most of them have two images, which ones of those  
 15 would you consider would constitute an image that  
 16 you said was anti-government, anti-law enforcement  
 17 or -- what was the other one -- or racist or  
 18 indicative of future criminal behavior. Tell me  
 19 which one.

20 A. If you wouldn't mind giving me a minute to  
 21 look through them so that I could appropriately  
 22 guide you.

23 MR. GORENCE: While we're doing that, Your  
 24 Honor, could we take a five-minute break? I need  
 25 to use the restroom. We've been at it for two

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1 hours.

2 THE COURT: We can take a break, but I'm  
 3 going to put an end to some of these individualized  
 4 questions pretty soon because we're not going to go  
 5 past 5:00.

6 MR. GORENCE: No, I understand, Your Honor.

7 THE COURT: A lot of this is becoming  
 8 unnecessary. The Court can read what these say and  
 9 what they don't say, and I don't need -- and I  
 10 have, in fact, read everything. So we'll take a  
 11 five-minute break.

12 (A recess was held.)

13 THE COURT: Sorenson, are you on the phone?

14 THE WITNESS: Yes, I am, Your Honor.

15 THE COURT: All right. We're back on the  
 16 record. Mr. Gorence, you may proceed.

17 Q. (By Mr. Gorence) I think you heard the  
 18 Court, Agent Sorenson, that instead of going  
 19 through one by one, why don't you tell me which  
 20 ones you found significant with regard to your  
 21 opinions that are either anti-government, racist,  
 22 anti-law enforcement or that would show that he's a  
 23 danger or a flight risk. And I understand the  
 24 Christchurch -- let me just -- that manifesto,  
 25 that's online, as well, correct?

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1       A. I'm unfamiliar with the one you're speaking  
 2 of. He had a couple of different ones.

3       Q. Okay. And those photographs are also  
 4 online. Those are snapshots of things that are out  
 5 there?

6       A. I imagine so, yeah.

7       Q. Okay. You don't have any information off  
 8 the phone that he's actually sent these to anyone  
 9 or communicated with anyone to engage in other  
 10 criminal activity of a concerted action --  
 11 concerted nature? You haven't seen anything like  
 12 that, have you?

13      A. Actually, I have, yes.

14      Q. Okay. Tell me about that. What have you  
 15 done? Explain that.

16      A. Sure. So he had text messages between him  
 17 and a team member about their plan for their  
 18 standoff with law enforcement if it ever came to  
 19 that, so I would say he has talked to other people  
 20 about this.

21      Q. Okay. So you're saying -- and I see Z.S.  
 22 was actually referred to in the criminal complaint.  
 23 He's a fellow airman in the 377th, correct?

24      A. That's true.

25      Q. And you're saying -- and again, these -- you

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1 called them -- the information on his phone, you  
 2 called it a bug-out. That has to do with basically  
 3 a pandemic or some sort of, you know, idea that you  
 4 have to take care of your family. That's what  
 5 those are, aren't they?

6 A. I'm not familiar -- I'm not too sure about  
 7 that, sir. I think it's a general plan. It says  
 8 the point is SHTF, which is stuff hits the fan, or  
 9 some other profane term to say it. So I think it's  
 10 left up to Airman Justice's interpretation of what  
 11 stuff hitting the fan means, and if that means  
 12 possibly spending many years in federal prison  
 13 because of his allegations, that might very well  
 14 constitute that, and he has established a checklist  
 15 to be able to bug out quickly if need be.

16 Q. Now, this checklist -- and I don't see it  
 17 in -- it's not copied in your list of 44 images, 44  
 18 pages, right?

19 A. Right, because it's not -- it wasn't a  
 20 photograph, sir. It was in his notes app,  
 21 something he made himself.

22 Q. You're saying there are handwritten notes?

23 A. No, there's a notes app on the Samsung  
 24 phone.

25 Q. Oh, notes on the phone, okay.

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1           THE COURT: All right. Hold on one second.

2           MR. STANFORD: We would, of course, provide  
 3 that in discovery if it comes to that. Again, this  
 4 doesn't hinge on this today. He's viewed it  
 5 personally himself. He's looked at these things on  
 6 his own.

7           MR. GORENCE: I'm not asking for -- I want  
 8 to understand what it is.

9           Q. Okay. There are notes on the phone and they  
 10 have to do with dealing with some sort of a crisis  
 11 when S hits the fan. Is that what it is?

12          A. I think that's accurate, sir, yeah.

13          Q. Okay. It doesn't say escape after a violent  
 14 incident, does it? It's just general survivalist  
 15 literature?

16          A. Right. That's a little oddly specific, but  
 17 it is general in terms of stuff hitting the fan.  
 18 There's also in the notepad sort of an unofficial  
 19 will and testament, kind of what to do after --  
 20 when and if he passed away, which is a little odd  
 21 for a 27-year-old to have in a note app on his  
 22 phone instead of a real living will. But those  
 23 were both in the note application of his phone.

24          Q. Was that shared with his wife, they wanted  
 25 some sort of codification after they had a child in

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1 terms of -- there was nothing in there other than a  
 2 regular will, right, all to mom and the child?

3 A. So I'm unsure of who he shared it with, sir.  
 4 I know it was in the note application of his phone.

5 Q. Okay. Is it a normal will? He doesn't  
 6 say -- there's no suicide note, no martyr note, no  
 7 manifesto of any kind about upcoming criminal  
 8 activity, right?

9 A. It's just a document written apparently by  
 10 him about things he would like to have happen if he  
 11 were to pass away.

12 Q. Okay. Is there anything in there about this  
 13 is going to be after a violent terrorist death?

14 A. That's not specifically mentioned.

15 Q. Okay. It looked like a normal will, all to  
 16 his wife and all to his child?

17 A. It doesn't look like a normal will being  
 18 that it's in the note application of a cell phone.

19 Q. Okay. Well, I understand maybe if you're  
 20 recording it in some way and getting it notarized,  
 21 but I'm saying does the content look like a normal  
 22 will?

23 A. More or less.

24 Q. Okay. Now, the Court's question is why  
 25 don't you just point out -- I won't go through one

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1 by one, but point out whatever is in there that you  
 2 think is supportive of your opinions that they are,  
 3 as I said, anti-government, anti-law enforcement,  
 4 racist, anything else.

5 A. So I wouldn't have (inaudible) this document  
 6 that he didn't believe in the totality of all of it  
 7 kind of combined, that it didn't show that in  
 8 general, but if you're asking me to point out  
 9 specific ones that I think stand out above the  
 10 rest, then I'll start on page 23 of 44.

11 This shows two memes, as you called it,  
 12 which the first one reads, "How black people gonna  
 13 tell white people they can't say the N word?  
 14 That's our word. No, it's literally our word. We  
 15 invented it specifically to call you it."

16 Q. I agree, that's racist.

17 A. The next image over on the same page says,  
 18 "When your Muslim neighbor keeps waking you up in  
 19 the middle of the night beating his wife," and then  
 20 you see an image. It has an AR-15 in the  
 21 background and a hand holding the white paint pen  
 22 which will correlate to the other images where he  
 23 has the names of Arian generals and mass shooters  
 24 written in white paint pen on an AR-15.

25 Q. Okay. Next.

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1       A. Would be page 29 of 44 where it's a little  
2 bit blurred out because it's a thumbnail image.  
3 "The oddities of the Christchurch shooting." Like  
4 I was asked earlier how I got the active shooter  
5 training. One of the traits of future active  
6 shooters is to study previous active shooters to  
7 see where they went wrong and things that this next  
8 one can improve upon by learning from the others  
9 mistakes.

10      Q. This is on page 19, did you say?

11      THE COURT: 29.

12      A. 29.

13      Q. I misheard him. Sorry. Now, that was --  
14 it's hard to read on my copy, but this is a screen  
15 shot?

16      A. Yes, it appears to be a screen shot of the  
17 Christchurch shooting oddities and then a list of  
18 things that were odd about that shooting.

19      Q. Okay.

20      A. And what I can tell you is on Airman  
21 Justice's actual cell phone these words are  
22 readable. When I saved it to this document, for  
23 some reason the thumbnail image is stretched out  
24 and makes it quite blurry and hard to read.

25      But the next one would be on page 44, the

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1 last page. And on that page, the two images there,  
 2 the one on the left says, "How dare you talk about  
 3 cops like that? My brother died in the line of  
 4 duty," and then you see an image, and the response  
 5 selected is, "You're a little bitch and your  
 6 brother was, too." So obviously calling law  
 7 enforcement officers profane language and making a  
 8 joke about their death and the loss of a loved one  
 9 in the line of duty.

10           And then the image on the right is two  
 11 individuals and says, "My family claiming how sweet  
 12 I am," and then shaking hands, "me knowing I'm on a  
 13 few watch lists and will be labeled a domestic  
 14 terrorist soon."

15           Q. Now, this was -- who is the guy on the  
 16 right? He's a comedian, isn't he? I don't even  
 17 know who that is.

18           A. Yes, I believe he is a comedian and actor.

19           Q. Okay. So this is somebody else and this is  
 20 a screen shot of just what's kind of a joke?

21           A. I believe you could think it's a joke, but  
 22 it's also specific.

23           Q. Hold on one second. The photographs from  
 24 the house, I want to -- I'm going to finish on  
 25 this. The majority of the firearms were locked in

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1 the safe that was shown, correct, all but five?

2 A. I believe that's correct, sir.

3 Q. Okay. Because they were taken out. And  
4 then there was two holstered handguns. They were  
5 holstered and secured, placed high up on a cabinet  
6 on a ground floor. Correct?

7 A. That is incorrect. So they were holstered.  
8 They were not -- they were not placed high up.

9 They were placed about 15 inches off the ground on  
10 a shelf.

11 Q. Okay. On a shelf. The point being they  
12 were on the ground floor close to the front door.  
13 And then there was a handgun found in the bedroom  
14 upstairs, in a dresser, correct?

15 A. There was two handguns found upstairs, sir.

16 Q. Okay. And they were in a nightstand or  
17 dresser or where?

18 A. I believe they were both in the nightstand  
19 on each side of the master bed.

20 Q. Okay. And then the other was the rifle that  
21 was in the car in the back seat and that was on the  
22 street, correct?

23 A. There was one other in the house, sir. So  
24 there was an AR-15 with a loaded magazine rested up  
25 against his master bedroom wall facing the window,

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1 if you will. And that window overlooks the avenues  
 2 of approach to his house as well as it looks  
 3 directly at a school that's approximately 350 feet  
 4 away.

5 And then the last one that was outside of  
 6 the space was in his vehicle, and that's the one  
 7 that was parked in the national security area with  
 8 the (inaudible).

9 Q. Now, that gun was unloaded, the one in the  
 10 vehicle, correct?

11 A. It had a bunch of ammo affixed to the side  
 12 of it, and it's a break action weapon. It was  
 13 folded but all that had to happen was to grab one  
 14 of the pieces of ammo off the side of it, put it in  
 15 the chamber and then close the breach and then it  
 16 would have been loaded.

17 Q. Okay. So it was -- ammunition was close at  
 18 hand. But you know the definition. It wasn't  
 19 loaded because it wasn't in the chamber or in the  
 20 magazine. You know that. That's the definition of  
 21 a loaded firearm. So we can agree that it was  
 22 unloaded with ammunition nearby?

23 A. There was ammunition affixed to the weapon.

24 Q. Okay. And when you say the AR-15, again,  
 25 that was lawfully possessed and it wasn't fully

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1 automatic, right?

2 A. It was lawfully purchased but possession at  
 3 his on-base residence, no. He had not obtained the  
 4 authorization to be able to store those there.

5 Q. Okay. We're going to talk on that last, but  
 6 that weapon had a magazine but it wasn't loaded  
 7 with any cartridges either in the receiver nor in  
 8 the magazine, right?

9 A. There was ammo in the magazine, sir. The  
 10 chamber was empty, but there was ammo in the  
 11 magazine.

12 Q. Oh, okay. One second. Now, finally, this  
 13 question about the regs are very different with  
 14 regard to a private residence and dormitories,  
 15 right? You called the regulations nebulous?

16 A. I don't remember calling them nebulous, sir,  
 17 but they're not that different. There's really  
 18 maybe a slight difference in the fact that in a  
 19 dormitory you are mandated to store your weapons in  
 20 the armory, but in an on-base residence you are  
 21 only required to obtain the permission to store  
 22 your weapons in your house. And if you don't  
 23 obtain that from the base command, then you are  
 24 required to store them in the armory. So it's  
 25 really not that much different.

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1       Q. And I'm just asking. You're saying it's  
 2 widely known. It's not on the lease agreement, so  
 3 I'm wondering where is that communicated because he  
 4 has these accessed. So tell me where that  
 5 regulation, if it exists, how is it communicated to  
 6 an airman who is leasing a duplex on the base?

7       A. Sure. So the regulation does exist, sir.  
 8 It's not necessarily if it exists. It's definitely  
 9 a fact, and it's ordered by the 377th air base wing  
 10 commander. And with airmen in process installation  
 11 they go to what's called a newcomers' briefing, and  
 12 in that newcomers' briefing you are -- there's an  
 13 individual who will brief you on the processes of  
 14 storing your personal firearms on base.

15           And the people that give that briefing on  
 16 that process are also the security forces member,  
 17 so Airman Justice's colleagues. So people in his  
 18 same status with the same knowledge and training  
 19 that he has provide the briefing to others so that  
 20 they know what they need to store their weapons on  
 21 base.

22           So Airman Justice not only would have known  
 23 but he would have possibly had the responsibility  
 24 to teach others the same thing. So it's definitely  
 25 briefed more than once, and also squadron

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1 commanders are given monthly briefings where  
 2 they're supposed to send out either through e-mail  
 3 or to do what's called a call, so they'll bring all  
 4 their members in and give them monthly briefings on  
 5 certain things. And that's one of the dockets that  
 6 we will go to them every now and again to insure  
 7 that their members are staying within the rights or  
 8 staying within the regulations as established on  
 9 base.

10 MR. GORENCE: I have no further questions,  
 11 Your Honor.

12 THE COURT: Okay. Any redirect?

13 MR. STANFORD: Yes, brief.

14 REDIRECT EXAMINATION BY MR. STANFORD

15 Q. Agent Sorenson, could Airman Justice make  
 16 and auto sear using a coat hanger?

17 A. He could.

18 Q. Did he, in fact, have schematics for that?

19 A. He did.

20 Q. Given all the firearms and ammunition and  
 21 the preparation checklist he made, do you think  
 22 it's possible Airman Justice has stashed other  
 23 firearms or weapons either around his residence or  
 24 off base?

25 MR. GORENCE: Your Honor, that's clearly

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1 speculation in terms of could have. They've had a  
 2 lot of time to investigate any other access, so, I  
 3 mean, anybody could have done anything, but there's  
 4 really no basis for that and it's rank speculation.

5 THE COURT: Why don't you ask him if there's  
 6 any evidence that points to whether he has done  
 7 that or not.

8 MR. STANFORD: That's okay. I'll withdraw  
 9 it. I don't think there is any evidence that he  
 10 has stashed anything.

11 Q. But you're hearing the question, Agent  
 12 Sorenson. Do you have any reason to suspect that  
 13 he's got other weapons stashed anywhere?

14 A. The one thing that's raising suspicion for  
 15 us is that in his garage he had multiple keys to  
 16 Master locks and to other things that didn't  
 17 correlate with a lock at his house. So we suspect  
 18 that he may have a storage unit. We've checked all  
 19 the logical ways that we have to figure that out  
 20 and haven't been able to identify anything yet.

21 But based on the fact that he had all these  
 22 keys with no locks to match them makes me think  
 23 there's possibility something locked elsewhere that  
 24 he has the key to, so that's something that we're  
 25 still trying to figure out.

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1       Q. Okay. Can I get you to look at one more  
2 photograph. It's page 15 of 44 on Exhibit A.

3       A. Yes, sir. Give me one second. Okay.

4       Q. Can you give me your assessment of that  
5 picture in light of Mr. Gorence's question, his  
6 request that you name the pictures that you found  
7 disturbing or threatening to government or police  
8 or others?

9       A. Yes, sir. So there's two pictures here.  
10 Would you like me to explain both or one or the  
11 other?

12       Q. Sure, both would be fine.

13       A. Okay. The one on the left, what they appear  
14 to be doing it an (inaudible).

15           THE COURT: What page are we talking about?  
16 I'm sorry?

17           MR. STANFORD: 15 of 44 on Exhibit A, Your  
18 Honor.

19       Q. Just a second, Special Agent. Let the judge  
20 turn to that page.

21           THE COURT: Okay. I have it.

22       Q. Okay. We're good.

23       A. Okay. So the top of the picture on the left  
24 is apparently a (inaudible) machine milling out the  
25 receiver of an AR-15, and next to it the caption

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1 says, "What I appear to be doing." The lower image  
 2 is "What I'm actually doing," and this is a  
 3 military tactic called the L-shaped ambush, and  
 4 what this is is to outflank the enemy, potentially  
 5 box them into the firing position so that you can  
 6 overwhelm them and win the fire fight. So I'm not  
 7 sure what the correlation between those two images  
 8 is, but that's the description of that.

9                   The image on the right, it appears to be  
 10 like a round table, maybe it's a mockery of the  
 11 Knights of the Round Table or something of that  
 12 nature, and it says, "Hey, police," and it has all  
 13 these different groups, whether it be dog owners or  
 14 (inaudible) or hippies. It's just a list of a  
 15 bunch of different types of groups all sitting  
 16 around the round table hating the cops. So that  
 17 was my interpretation of those images, sir.

18                   Q. Okay, thank you.

19                   MR. STANFORD: Your Honor, I have no further  
 20 questions of Agent Sorenson. Can we cut him loose?

21                   THE COURT: Yes. I presume -- yes.

22                   MR. STANFORD: Thank you, Agent Sorenson,  
 23 very much.

24                   THE WITNESS: Of course, sir.

25                   THE COURT: Do you need us to call back the

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1 agent who you were cross-examining?

2 MR. GORENCE: No, Your Honor.

3 THE COURT: Okay. And is there any other  
4 witness for the government?

5 MR. STANFORD: No, Your Honor.

6 THE COURT: Is there any other witness or  
7 any witness for the defense even referenced?

8 MR. GORENCE: Could I have one second?

9 THE COURT: Yes.

10 (Discussion off the record.)

11 MR. GORENCE: Your Honor, my client would  
12 like to testify, and I need to get -- I thought we  
13 went over all this stuff and I need -- I need a  
14 couple of minutes in private with him before I  
15 can -- again, it's his choice, but I have not fully  
16 counseled him on that yet.

17 THE COURT: Yes, we will definitely give you  
18 the opportunity to do that --

19 MR. GORENCE: Okay.

20 THE COURT: -- because that's a significant  
21 decision if he's going to make that choice.

22 MR. GORENCE: Yeah, I need to explain that  
23 in greater detail as far as cross-examination.

24 THE COURT: Okay. Why don't we -- so the  
25 options are that everybody else can clear the

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1 courtroom except the marshals and --

2 MR. GORENCE: The marshals, again, that's  
3 fine.

4                   THE COURT: So we'll clear the courtroom,  
5 and then if you could just let us know when to come  
6 back. And then is Mr. Justice planning to -- does  
7 he want me to appoint him free counsel?

8                   MR. GORENCE: He does, Your Honor. I was  
9 retained by Mr. Justice --

10 | THE COURT: Right.

11 MR. GORENCE: -- only on a very limited --  
12 they don't have the resources for what this type of  
13 case would entail with investigators and experts,  
14 and I explained that. They wanted somebody  
15 immediately and that's all the family could afford.

16                   THE COURT: Okay. Well, I've reviewed this  
17 financial affidavit. Sir, it appears that you  
18 qualify for free counsel, and so I will -- based on  
19 the request that I'm hearing from Mr. Gorence, I'll  
20 appoint an attorney to represent you free of  
21 charge. That attorney will be appointed to your  
22 case probably tomorrow.

23 | THE DEFENDANT: Thank you, Your Honor.

24 THE COURT: And then, certainly, if  
25 circumstances change and you find that you have the

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1 resources to appoint counsel, if that comes about,  
2 you certainly have the freedom to appoint -- or to  
3 hire an attorney at any point in time. All right.  
4 So we will take this recess.

5 (A recess was held.)

6 THE COURT: Okay. We're back on the record.

7 MR. GORENCE: Mr. Justice will not testify.  
8 Do you want arguments or a proffer, which I'd like  
9 to do very briefly?

10 THE COURT: Sure. Do you want to make  
11 argument?

12 MR. GORENCE: I'll follow Mr. Stanford.

13 MR. STANFORD: Yeah, I just have some brief  
14 remarks, Your Honor. Can you hear me okay?

15 THE COURT: I can hear you. Carla, is the  
16 recording picking it up?

17 COURT CLERK: I believe so.

18 THE COURT: Why don't you -- why don't you  
19 just sit.

20 MR. STANFORD: Your Honor, the evidence  
21 adduced here today has demonstrated that the  
22 defendant had plans to make silencers and kits to  
23 convert his pistol into a machine gun and then he  
24 ordered those items. He had a plan and acted on it  
25 by attempting to import them. He also reviewed

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1 instructions for making homemade explosives, and we  
 2 don't know what steps he may have taken in regards  
 3 to acting on those plans.

4 The fact that he didn't flee after being  
 5 released by the Air Force prior to trial is not  
 6 impressive for a couple of reasons. Number one,  
 7 he's shown a habit of preparing and planning. I  
 8 think it's unlikely -- I think he's clever, and I  
 9 think it's unlikely that he would just randomly try  
 10 to flee. I think he was waiting for the most  
 11 advantageous time to act.

12 The other reason it's not impressive is  
 13 because the Air Force, when they reviewed his  
 14 detention, they didn't know that all this stuff was  
 15 on his phone. That hearing occurred absent all of  
 16 these things. And so I believe that he thought he  
 17 had not been detected for that stuff, and so it's  
 18 possible that the motivation was not as intense as  
 19 it may be now.

20 We know he ordered 30 other silencers and  
 21 other gun parts. He had almost 7,000 rounds of  
 22 ammunition, body armor that he wasn't supposed to  
 23 have and some other government-issued equipment  
 24 that he wasn't supposed to have.

25 Without spending any time, you know,

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1 belaboring the obvious, what was on his phone was  
 2 very disturbing. What comes to mind, Your Honor,  
 3 is the growing number of cities that have seen  
 4 active shooter events are all asking themselves the  
 5 same question constantly, how did we miss this,  
 6 what could we have noticed better, what didn't we  
 7 know that we should have known? Well, in this  
 8 case, we don't know for sure what his plans were,  
 9 but we sure know that what he had was very  
 10 disturbing. And I would submit to the Court that  
 11 it's possible that we have interrupted a very  
 12 dangerous event from occurring. And the United  
 13 States' position is that Mr. Justice should remain  
 14 detained so that we can maintain safety from  
 15 whatever plan he may have been considering.

16 THE COURT: All right. Mr. Gorence.

17 MR. GORENCE: Your Honor, this is atypical.  
 18 You have someone in the end, he's really charged  
 19 with safeguarding nuclear weapons and he's done  
 20 that five years without a problem. What he wanted  
 21 to testify -- and, again, I'll just proffer -- he  
 22 has never shoplifted in his life. He comes from a  
 23 very -- I met his mother now, extensively talked to  
 24 both of his parents and his wife -- very  
 25 conservative, very religious, and it has imbued

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1 certain characteristics on Mr. Justice in terms of  
 2 being profoundly pro-United States, pro-law  
 3 enforcement, and we'll touch on that in a second,  
 4 and which caused him to enlist in the Air Force.  
 5 He was an excellent student. Started then college  
 6 right afterwards but felt called to go into the  
 7 military.

8 The incident with the beret, and you can see  
 9 there's an explanation from his standpoint why that  
 10 made him more action-ready, and again a difference  
 11 in terms of what he really thought his mission was  
 12 24/7.

13 The shoplifting is really disturbing because  
 14 he was with two colleagues and someone put it in  
 15 his bag and wanted to do this as a gag, which is  
 16 why he wasn't prosecuted, but the other officer  
 17 would have been in trouble for this, quote, gag.  
 18 He's never stolen -- again, you can look at his  
 19 background. I mean, it's just atypical that all of  
 20 a sudden you're in the military and you're going to  
 21 go to a place and steal \$300 worth of ammunition  
 22 and he's with his friends.

23 Because his hobby is guns. He shoots all  
 24 the time. It's 3,000 rounds in the affidavit. The  
 25 agent misspoke, and it was too long to get into it,

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1 but there's 3,000. The vast majority are .22 if  
 2 you look at them, 22 because that's actually the  
 3 cheapest thing you can shoot by far if you get into  
 4 shooting, compared to very expensive rounds. And  
 5 the vast majority of those guns are .22s because he  
 6 likes to go out and shoot.

7 And, again, I don't do that myself. I know  
 8 something about firearms, but I don't engage in  
 9 that as a hobby, but it's really the only thing on  
 10 his salary to go out and shoot, and it's not  
 11 atypical to keep them -- you can see that plastic  
 12 tub. That's the most. The other ones are all in  
 13 boxes. Most of those are shotgun shells. Some of  
 14 them are rifles, a couple of them are .232, but  
 15 they're all in the cabinet pictures.

16 But anyway, getting back to someone who has  
 17 never engaged in criminal conduct, and what we  
 18 really get to and would like to express and with  
 19 his job performance evaluations that we don't have,  
 20 but I'm going to proffer, with the exception of the  
 21 one year where he got just dinged over a practical  
 22 joke that he didn't want to get his friend in  
 23 trouble, that's the only blemish he's ever had in  
 24 his entire life.

25 We get to this and we'll talk about -- maybe

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1 they'll be silencers. Maybe they're not. They're  
 2 sold as barrel extensions. That's the website that  
 3 they were. And, yes, they have an appearance that  
 4 makes them look different, and I will tell you  
 5 there's nothing to be hidden by it in the  
 6 slightest. He uses his own name. He says these  
 7 are cheap kind of interesting apparatus. They're  
 8 not kits in terms of kits to build your own. He  
 9 doesn't have that. There are three, two that he'd  
 10 ordered, one that he'd had for a long time and  
 11 ordered that on a website and used that only on a  
 12 .22 rifle.

13 And, Your Honor, the situation -- and I want  
 14 to talk -- because the one really disturbing thing  
 15 is that he says he ordered -- and those three are  
 16 in his name and receipts and all of that. He has  
 17 never ordered a kit that would make something fully  
 18 automatic. I know there's testimony. We haven't  
 19 seen the documents. It wasn't part of what was  
 20 charged by Sorenson on the base. He doesn't have  
 21 one. There's no picture of one. And that will be  
 22 disputed because, again, if someone really had a  
 23 machine gun part or it looks like you're shooting  
 24 one and it's unauthorized, it carries very  
 25 different penalties, whereas silencers came within

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1 eight votes of passing -- and, again, Mr.  
 2 Stanford -- I had a silencer case with Judge  
 3 (inaudible) -- I tried that with Mr. Bowles  
 4 actually for three weeks in Las Cruces a couple of  
 5 years ago -- with a person who had been in the  
 6 military who wanted them because they're really  
 7 with regard to hearing. That's the biggest reason.  
 8 And there was a push for a law to make most  
 9 silencers not illegal because there is a whole  
 10 different aspect to target shooting, hunting, where  
 11 you don't want to have the sound of the gun. There  
 12 are legitimate reasons.

13 There are also is to make guns look cool,  
 14 but again, be that as it may, the issue in this  
 15 case and what the government is arguing is that we  
 16 have a want-to-be terrorist, and yet Mr. Justice is  
 17 the most rigid, law enforcement related person --  
 18 and I'll get into this, where he actually does have  
 19 training in guarding nuclear weapons, is what he  
 20 wanted to say, where they have many active shooting  
 21 drills. Not someone who comes on to Kirtland Air  
 22 Force Base, but the idea that there is a shooter  
 23 with regard to some proximity of what he's supposed  
 24 to guard with such obvious zeal given the  
 25 importance of the weapons systems at stake. But

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1 they train, and in the context of that he has  
 2 looked at multiple cases of what people have done.

3           And the real issue in this case, I would  
 4 say -- it's like that movie where you're trying to  
 5 divine or go in through some sort of MRI or brain  
 6 scan what someone's future intent is, and all I  
 7 would say is, when you look at all of these things,  
 8 a couple of them are racist being passed around by  
 9 cops. I don't know if he's a racist but he's not a  
 10 felon. He certainly has a political point of view,  
 11 I believe, but again most of those are like that.

12           The chemical stuff is all what is online.  
 13 There's not one shred of ever going to a place to  
 14 buy one aspect of that. There's not one iota of  
 15 information that he's coordinating with someone to  
 16 actually obtain machine guns or to do something of  
 17 violence. There's not -- if someone has got an  
 18 interest in following what other people in criminal  
 19 activity in large part so he can insure, if this  
 20 happens at my Air Force facility, that he takes  
 21 some -- from what I've heard, I don't have them  
 22 yet, but his performance appraisals are --  
 23 actually, he has undue zeal. And maybe if there's  
 24 something in these things it's about this undue  
 25 zeal.

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1           But again, if you look at things online,  
 2 some of them are screen shotted, there's just not  
 3 one thing that takes that into what I would say is  
 4 a conspiracy in terms of what you're looking at and  
 5 place that in terms of a concrete objective to make  
 6 it happen. Buy something -- the silencers, I get  
 7 the silencers, but I dispute the sear pin. But  
 8 there's not one thing that takes us outside the  
 9 recreational shooting that he does all the time.  
 10 It's his hobby with everybody else that are all  
 11 military people, as well.

12           Again, I don't know if all these other  
 13 people are going to get in trouble for firing the  
 14 silencer because they possessed at the same time,  
 15 but that's really what's happening. Maybe there's  
 16 going to be a lot of careers derailed as a result  
 17 of this silencer. But no one has machine guns  
 18 that they're not supposed to have. No one is  
 19 stockpiling weapons of mass destruction in any way.  
 20 It's really just looking at stuff.

21           Finally, the weapons in the house, secured,  
 22 and, yes, he is a firm believer in the Second  
 23 Amendment. He'll tell you that on this idea that  
 24 it was well known, he said everybody has weapons  
 25 and he said I didn't know I had to register them in

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1 some way. When he started before he was married --  
 2 because he got married -- he started here single,  
 3 lived in the dormitory as a result. He had  
 4 weapons, and he goes, yes, I had to store them in  
 5 the armory that was in the basement of each one of  
 6 those dormitories and they were always stored that  
 7 way. Once I got the house, never told, never said  
 8 anything because I had the same -- I acquired new  
 9 weapons. But he had multiple weapons beforehand.  
 10 And this will all come out at trial, but now I'm  
 11 just proffering, and I think part of the reason  
 12 that the colonel found that he's not a danger of  
 13 flight risk and the reality is, if someone was a  
 14 terrorist and they had the opportunity to leave --  
 15 and he did on the 25th when he was released -- they  
 16 would have taken off.

17 He's got substantial ties with a brand new  
 18 baby. His wife is here, family. He's got one  
 19 sister in Florida, as well. I mean, he's got  
 20 really substantial ties. No ties to any terrorist  
 21 organization and he's never done one thing in  
 22 furtherance of what they're really talking about  
 23 other than having an interest and putting things on  
 24 his phone.

25 Again, it would be so different, I would

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1 suggest, if there was some ISIS-related  
 2 communication, some white nationalist group  
 3 membership, all these things -- if he's in  
 4 Charlottesville. If he had been marching in  
 5 Charlottesville, took R&R to go there, we'd have a  
 6 different situation, and, again, because that's  
 7 not -- we could call it political because it  
 8 wasn't. It was violent.

9 THE COURT: We have testimony that the  
 10 Instagram page that he was getting a lot of these  
 11 instructions on how to make IEDs was a page that's  
 12 known to be white nationalist. I think I heard  
 13 that. We have a manifesto of a shooter. We have a  
 14 photograph or two of magazines with the names of  
 15 other shooters, other murderers who have engaged in  
 16 this type of behavior. And so when you say there  
 17 was no step that was taken, I'm not sure that any  
 18 of those people killed anyone prior to the day that  
 19 they committed their active shooting, but they did  
 20 stockpile weapons. They did study other people,  
 21 other active shooters' writings.

22 MR. GORENCE: His job involves preparing  
 23 against shooters. That's all I'm saying, Your  
 24 Honor. There is a very distinct difference  
 25 between -- and again, not that I'm an expert, but,

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1 well, the individual in Christchurch who videotapes  
 2 that live and creates documents about what he's  
 3 going to do beforehand and has -- -- from that  
 4 website, if you look at it, he basically said he  
 5 was going to go over and do this and bought fully  
 6 automatic weapons and all of his Instagram account  
 7 all but said this was going to happen.

8 We don't have that here other than someone  
 9 who has an interest, and one could say it's a  
 10 job-related interest because he is -- and again,  
 11 we'll get the records but he has -- especially on  
 12 short notice on this, but he actively trains for  
 13 shooting incidents. He has defended against one  
 14 that was called out while he was on duty on the  
 15 base. A call went out with regards to what was  
 16 believed to be an active shooter. Turned out not  
 17 to be, but he trains for, prepares for and actually  
 18 engaged against on one occasion. So the idea that  
 19 there's some deification of anything, I don't see  
 20 it that way other than this is sourced material.

21 Tellingly, Your Honor, there's all these  
 22 guns and magazines. Are any of them modified in  
 23 any way so that they have names of these murderers?  
 24 That would be the kind of thing -- I mean, does he  
 25 actually have the paint? Has he done anything to

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1 his own weapons?

2 THE COURT: Well, the only thing we heard  
 3 about was the rifle in his vehicle that had a  
 4 silencer on it.

5 MR. GORENCE: Well, that's the one we've  
 6 seen with regard to an alleged silencer that he's  
 7 had all along. What I'm saying is, is there any  
 8 indication that these are going to be used for  
 9 future criminal activity as in let me paint my  
 10 magazines? Again, if that was the case or he says  
 11 I'm going to paint my magazines and he's got these  
 12 posts to other people -- these are just open  
 13 websites to people available anywhere, but not  
 14 one -- I would submit there's not one concrete step  
 15 taken other than he has and has always had a fair  
 16 number of firearms which he's lawfully entitled to  
 17 do. He's not a felon.

18 I can see the storage issue, and, as I'm  
 19 pointing out, he was unaware they had to be  
 20 registered. And he said back in 2015 I was well  
 21 aware of what I had to do at the dormitory, and  
 22 that's the only briefing he ever got. He says, if  
 23 you had a gun, you could not store it in a dorm.  
 24 You had to put it down. When he got done with  
 25 that, he said it's his understanding, and he had

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1 the same guns, he didn't have to put them in an  
 2 armory.

3 And, actually, this idea that you had to  
 4 take -- again, at trial, if this comes out we'll  
 5 bring his 377th flight commander because he knew  
 6 all the time. I've shot with him. He knows I have  
 7 these guns in the house. So, again, I don't have  
 8 it yet, but this was no secret that he had guns and  
 9 he was shooting with all of his Air Force  
 10 colleagues and they weren't getting the guns out of  
 11 an armory.

12 And again, his security classification, one,  
 13 it is rare for airman to have it, but his has a  
 14 secret -- and I don't know how they designate it in  
 15 the Air Force, but it had multiple modifications  
 16 because of his access to nuclear weapons. It did  
 17 require a background check. It did require  
 18 whatever the Air Force -- there's a process for it,  
 19 and it wasn't affected by this alleged shoplifting  
 20 nor anything else, and I think it's a testament  
 21 that he has it for five years.

22 There's no idea that he's now been  
 23 radicalized on base to do anything. That's never  
 24 what's happened. So I believe, as I said, that  
 25 while both of these cases play out, the Article 31

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1 and this case, Your Honor, hard to imagine with an  
 2 ankle bracelet, living with his wife and his  
 3 daughter on base doing his work, earning a salary  
 4 that he's supposed to be making, well, he is making  
 5 to support his family which he would continue to  
 6 earn while that's happening, with -- there can be  
 7 whatever reporting requirements because kind of the  
 8 test is what happened after he got charged, not  
 9 just with flight but anything else. A true  
 10 domestic terrorist is going to do something so that  
 11 he's not in custody. And there are, I think, very  
 12 effective ways on the base to insure that he  
 13 doesn't leave. He'll stay on the base and do his  
 14 job, come back to his wife and child.

15 Can't leave with an ankle bracelet. They  
 16 can post -- there's only several gates. He's not  
 17 going to climb over. He's not going to be taking  
 18 off, and he clearly wouldn't have access to  
 19 firearms. I think that accommodates most danger  
 20 and flight.

21 THE COURT: I have a question about that  
 22 because one of the exhibits to this motion -- I  
 23 can't remember what it was, but it was the release  
 24 order and the conditions that were set. One of the  
 25 conditions was a mental health evaluation and that

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1 Mr. Justice not leave Kirtland Air Force Base until  
 2 that investigation had been completed, and I heard  
 3 testimony that he went to the airport. Do you have  
 4 anything further about that?

5 MR. STANFORD: That would be in violation of  
 6 that order, Your Honor. And to my knowledge, the  
 7 order has not been lifted that he not leave the  
 8 base, and, clearly, going to Albuquerque Sunport is  
 9 outside the confines of Kirtland Air Force Base.

10 MR. GORENCE: Your Honor, I don't know.  
 11 That was kind of an offhand thing. He's never been  
 12 to the airport. He's never been off base since he  
 13 was released. And he did have the mental health  
 14 report and cleared -- that was done by who?

15 (Inaudible)

16 MR. GORENCE: Commander of mental health at  
 17 Kirtland, and he passed that, completed that. And,  
 18 again, this idea that he was at the airport --  
 19 again, maybe I guess there's testimony we can do  
 20 that on a motion to reconsider, but he said he's  
 21 never left the base and can't leave the base after  
 22 that. So I wasn't sure if that was after the  
 23 release order or before, but this testimony is  
 24 coming in now about -- I guess he's heard that from  
 25 the FBI, and I don't know what the basis was, but

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1 my client did not. If we have to we'll get those  
 2 records and there will be a motion to reconsider if  
 3 that's the lynchpin, but he's done everything that  
 4 was required and passed that mental health  
 5 evaluation, passed that he had no mental health  
 6 issues.

7 THE COURT: All right. Is there anything  
 8 further?

9 MR. GORENCE: No, Your Honor.

10 THE COURT: All right. Mr. Justice, come up  
 11 to the podium, please.

12 Sir, after considering the factors set forth  
 13 in 18 United States Code Section 3142(g), the  
 14 information presented at the detention hearing,  
 15 this motion to detain pending trial, the pretrial  
 16 services report, I conclude that you must be  
 17 detained until your trial in this case because I  
 18 find by clear and convincing evidence that you're a  
 19 danger to the community and that no condition or  
 20 combination of conditions of release will  
 21 adequately mitigate that dangerousness.

22 I find that you pose some degree of flight  
 23 risk. The weight of the evidence against you in  
 24 this case is strong, and you're subject to a  
 25 lengthy period of incarceration if convicted, and

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1 so there are certainly some circumstances that are  
2 different from the circumstances you were facing  
3 when you were released on the Air Force release  
4 order, but I'm not basing my finding on flight  
5 risk, although I do find that there is some degree  
6 of flight risk.

7 All right. Anything further?

8 MR. STANFORD: No, Your Honor.

9 MR. GORENCE: No, Your Honor.

10 THE COURT: We're in recess.

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